(27,122)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 373.

STRATHEARN STEAMSHIP COMPANY, LIMITED, PETITIONER,

vs.

JOHN DILLON.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 3, 1919.

a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings had and done at regular terms of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Wednesday, November 21st, A. D. 1917, and on Thursday, November 21st, A. D. 1918, at New Orleans, Louisiana, before the Honorable Richard W. Walker and the Honorable Robert L. Batts, Circuit Judges, and the Honorable Beverly D. Evans, District Judge.

JOHN DILLON, Appellant,

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn," Appellee.

b Be it remembered, that heretofore, to-wit, on the 23d day of August, A. D. 1917, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Northern District of Florida, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3140; and that on the 5th day of December, A. D. 1917, a supplemental transcript of the record in said cause was filed, which said transcript and supplemental transcript are as follows:

c *Transcript of Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 3140.

JOHN DILLON, Appellant,

versus.

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn," Appellee.

Appeal from the District Court of the United States for the Northern District of Florida.

[Original Record filed August 23, 1917.]
U. S. Circuit Court of Appeals. Filed Oct. 27, 1917. Frank H. Mortimer, Clerk.

1 Record in the District Court of the United States for the Northern District of Florida, at Pensacola, in certain cause in admiralty therein, wherein John Dillon is libelant, and the

British Steamship "Strathearn," her tackle, apparel and furniture, and the "Strathearn" Steamship Company, are respondents:

Be it remembered, that on the 2nd day of August 1916, came John Dillon, Libelant, by his proctor L. W. Nelson, and filed in the Clerk's office of the District Court aforesaid his libel in words and figures following, to-wit:

In District Court of United States for the Northern District of Florida.

To the Honorable Wm. B. Sheppard, Judge of the District Court of the United States for the Northern District of Florida:

The Libel of John Dillon, Division of Pensacola, Florida, late mariner of the vessel known as the S. S. "Strathearn" whereof R. McKenzie, was Master, against the said S. S. "Strathearn," her boats, tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of subtraction of wages, Civil and Maritime, allege and artiqulately propound as follows:

First. That at the dates set forth in the Schedule hereto attached and made part hereof, the said S. S. "Strathearn" whereof the said R. McKenzie, was Master being at the port of Liverpool, England, the said Master, by himself or his agent, did hire and ship the said Libelant to serve as carpenter on board the said vessel, at the rate of wages specified and set forth in full in the Schedule hereto attached.

That in pursuance thereof, the Libelant went on board and
2 entered into the service of said Master, on said vessel, as such carpenter, aforesaid, and served for the time and at the rate of wages set forth in said Schedule.

Second. That during the whole time that he was in the service of said S. S. "Strathearn," to-wit, from the time when he went on board thereof to the time of -he leaving the same, he well and truly performed his duty as mariner on board said vessel, according to the best of his ability, and was obedient to the lawful commands of the said Master and the other officers of said vessel. Your Libelant further shows that at the time he was discharged from the said vessel the wages earned by him as aforesaid were not paid to him, or any part thereof, except what was duly credited in the Schedule hereto annexed; and that there is now due unto your Libelant, by reason of his services, the sum of $125.00 which the said R. McKenzie hitherto hath altogether refused, and still doth refuse, to pay, although often thereto required by your Libelant.

Third. That the said S. S. "Strathearn," at the time when said services were rendered as hereinbefore set forth, was a vessel of 2,844 regt. T. tons burden engaged in the business of foreign and domestic commerce and navigation upon the public and navigable rivers and waters of the United States, and upon the waters navigable from the sea, to-wit: upon the Atlantic Ocean and Gulf of Mexico, and that she now lies at the port of Pensacola, Florida, in said District, and within the reach of the process of this Honorable Court.

Fourth. Libelant alleges and represents to this Honorable Court, that on Aug. 2nd, 1916, at this port in Pensacola, Fla., he asked of and demanded of the said Master R. McKenzie, one-half (½) of the amount due him for said labor and payment of the same was refused. Whereby his contract with respondent has terminated and void.

3 Fifth. That all and singular the premises are true and within the Admirality and Maritime jurisdiction of this Honorable Court; in verification whereof if denied, Libelant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore the Libelant prays that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, may issue against the said S. S. "Strathearn," her boats, tackle, apparel and furniture, wheresoever the same shall be found; and that all persons having or pretending to have any right, title or interest therein may be cited to appear and to answer all and singular the matters hereinbefore set forth; and that this Honorable Court would be pleased to decree the payment of wages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same; and for such other relief in the premises as shall to law and justice appertain.

JOHN DILLON,
Libelant.

District Court of the United States for the Northern District of Florida Division, *ss:*

Be it remembered, That on this 2nd day of August, A. D. 1916, before me, at Pensacola, Florida, personally appeared the within named John Dillon, and made solemn oath that he had heard read the foregoing Libel, and knows the contents thereof, and that the same is true as to his own knowledge, except as to those matters and things stated to be on his information and belief; and as to those matters and things, he believes them to be true.

JOHN DILLON.

Sworn to before me, this 2nd day of August, A. D. 1916.
[SEAL.] B. E. WILSON,
Notary Public.

My Commission expires Sept. 18th, 1918.

4 SCHEDULE.

Referred to the foregoing Libel, and forming part thereof.

The S. S. "Strathearn." Dr.,
To John Dillon.
1916. $125.00

Amount due to August 2nd, 1916.....$125.00

being balance due Libelant for services performed.

Certificate of Commissioner.

L. W. Nelson, Proctor for Libelant, hereby certify that in my opinion *that* there is sufficient cause of complaint whereon to found Admiralty Process against the S. S. "Strathearn," her tackle, apparel and furniture, to answer for the wages of John Dillon.

L. W. NELSON,
Proctor for Libelant.

On the 2nd day of August, 1916, attachment issued against the steamship "Strathearn," her tackle, apparel, boats, sails, engines, boilers and furniture in favor of libelant, which is in words and figures following, towit:

United States District Court, Northern District of Florida.

The President of the United States of America to the Marshal of the Northern District of Florida, Greeting:

Whereas, Libels in rem hath been filed in the District Court of the United States, for the Northern District of Florida, on the 2nd day of August, in the year 1916, by Hugo Ronlund; Jeronimo Casalice and John Dillon, late mariners on the Steamship "Strathearn," whereof R. McKenzie was Master, against the S. S. "Strath-
5 earn," her tackle, apparel, boats, sails, engines, boilers and furniture and against all persons lawfully intervening for their interest therein, in a cause of subtraction of wages, Civil and Maritime, for the reasons and causes in the said Libel mentioned, and praying the usual process and Monition of the said Court in that behalf to be made, and that all persons interested in the said Steamship or vessel, her tackle, etc., may be cited in general and special, to answer the premises, and all proceedings being had that the said Steamship, or vessel, her tackle, etc., may, for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libelant.

You are therefore hereby commanded to attach the said Steamship, or vessel, her tackle, etc., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Northern District of Florida, on the 21st day of August, 1916, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf.

And have you then and there this writ, with your return thereon.

Witness, the Honorable William B. Sheppard, Judge of said Court, and the seal of said Court, at the City of Pensacola, this 2nd day of August A. D. 1916.

[SEAL.] F. W. MARSH,
Clerk.

L. W. NELSON,
Libelants' Proctor.

Indorsement: Returnable August 21, 1916, and filed August 14th, 1916. F. W. Marsh, Clerk.

6 And with entry of seizure in words and figures following, to-wit:

In obedience to the within monition, I attached the S. S. "Strathearn" therein described, on the 2nd of August and have given due notice to all persons claiming the same, that this Court will, on the 21st day of August (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

JAS. B. PERKINS,
U. S. Marshal.
Per C. P. McMILLAN,
Deputy.

Filed Aug. 14, 1916. F. W. Marsh, Clerk.

And afterwards, to-wit:-on the 14th day of August, A. D. 1916, came Robert McKenzie, Master of the said S/S "Strathearn," and filed in the office of the Clerk of said Court the Claim for the said Steamship, which is in the words and figures following, to-wit:

In the District Court of the United States in and for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libelant,

vs.

STEAMSHIP "STRATHEARN," Respondent.

And now before this Honorable Court appears the Strathearn Steamship Company, Limited, a corporation, owner of the said Steamship "Strathearn" by Robert McKenzie, its agent, and
7 claims the above named ship "Strathearn," and prays to defend this suit accordingly.

BLOUNT & BLOUNT & CARTER,
Proctors for Claimant.

STATE OF FLORIDA,
County of Escambia:

Robert McKenzie, being duly sworn, says that the Strathearn Steamship Company, Limited, a corporation, is the true and bona fide owners of the Steamship "Strathearn" her boats, sails, tackle, apparel, furniture and other appurtenances against which this suit has been commenced by John Dillon, libelant, and that no other person is the owner thereof, and that for the purposes of this suit deponent is the agent of the owner, and deponent is the Master of said vessel, and is duly authorized by the said owner to put in this claim, and deponent further says that at the time of the commencement of this suit the said ship "Strathearn", her boats, sails, tackle, apparel, furniture and other appurtenances was in his possession as agent, and that he is the lawful bailee thereof for the owner.

R. McKENZIE.

Sworn to and subscribed before me this 14 day of August, A. D. 1916.

[SEAL.]

F. W. MARSH,
Clerk,
By A. G. CHIPLEY,
Deputy Clerk.

Stipulation for Claimant's Costs, Entered in Pursuance of Rule 16, *of the Rules of Practice of Said Court.*

In the District Court of the United States, Northern District of Florida, at Pensacola.

Whereas, a libel was filed in said Court on the 2nd and 3rd day of August, A. D. 1916, by John Dillon, Jeronimo Casilice, Hugo Runlund and John Hoikkala, against the Steamship "Strath-
8 earn", for the reasons and causes in said libel mentioned, and praying that the said vessel be condemned and sold to pay the claim of the said libelant.

And whereas, afterwards on the 12th day of August, A. D. 1916, a claim was interposed and filed by Strathearn Steamship Company, Limited, a corporation.

And the parties hereto, hereby consenting that in case of contumacy or default on the part of the said claimant or his surety, execution may issue for the sum of Two Hundred and Fifty Dollars, ($250.00) against their goods, lands, tenements and chattels.

Now therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned, shall be, and each of them is hereby,—bound in the sum of Two Hundred and Fifty Dollars, ($250.00) conditioned that the claimant above named shall pay all costs and expenses which shall be awarded

against him by the final decree of this Court, or upon an appeal, by the Appellate Court, and shall further pay all costs and fees that may be due and payable by said claimant to any officer of said Court for services and fees incurred at the instance of said claimant or his proctor, and in default of the payment of the same, execution to issue as above provided. This bond to also apply to the causes of Jeronimo Casilice, Hugo Runlund & John Hoikkala, filed against said S/S "Strathearn."

STRATHEARN STEAMSHIP COMPANY,
Claimant.
By R. McKENZIE,
NATIONAL SURETY COMPANY OF NEW YORK,
By J. WALLACE LAMAR,
[SEAL.] *Attorney-in-Fact.*
Surety.

Taken and acknowledged this 12th day of August, A. D. 1916.
F. W. MARSH,
Clerk and Commissioner,
By A. G. CHIPLEY,
D. C. & Com'r.

9 Approved this 12th day of August, A. D. 1916.
[SEAL.] A. G. CHIPLEY,
Dep. Clerk and Commissioner.

Claimant's Stipulation for Costs. Filed Aug. 12, 1916.

United States District Court, Northern District of Florida.

Whereas, a Libel was filed in this Court, on the 2nd-3rd days of August, A. D. 1916, by John Dillon, Jeronimo Casalice, & John Hoikkala, Hugo Runlund against the Steamship "Strathearn", her tackle, apparel and furniture, for the reasons and causes in said Libel mentioned, and praying that the same may be condemned and sold to answer the prayer of said libelant.

And whereas, a claim has been filed therein, by Strathearn Steamship Company, Limited, a corporation, by Robert McKenzie, Master, and the said Strathearn Steamship Company, Limited, and National Surety Company, a corporation, surety, the parties hereto, consenting and agreeing that in case of default or contumacy on the part of the Claimant or its sureties, execution may issue against their Goods, Chattels and Lands, for the sum of Five Hundred Dollars.

Now, therefore, it is stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned, shall be, and are bound in the sum of Five Hundred Dollars, conditioned that the Claimant above bound, shall abide by, and pay the money awarded by the final decree rendered in this cause by this Court, or, in case

of appeal, by the Appellate Court or in the causes of Jeronimo Casalice, Hugo Runlund & John Hoikkala filed against said S/S "Strathearn" on Aug. 2, 1916.

STRATHEARN STEAMSHIP COMPANY,
[SEAL.] By R. McKENZIE,
Agent.
[SEAL.] NATIONAL SURETY COMPANY OF NEW YORK,
By J. WALLACE LAMAR,
[SEAL.] *Attorney-in-Fact.*

Signed, sealed and acknowledged before, and approved by me this 12th day of August, A. D. 1916.

[SEAL.] F. W. MARSH,
Clerk and Commissioner.
By A. G. CHIPLEY,
D. C.

Approved this 12th day of August, A. D. 1916.

[SEAL.] A. G. CHIPLEY,
Dep. Clerk & Com'r.

Claimant's Stipulation for Value. Filed Aug. 12, 1916,
F. W. MARSH,
Clerk.

And afterwards to wit upon the 6th day of October A. D. 1916 was file [filed] the answer of the said Steamship Company which is in the words and figures following to wit:

In the District Court of the United States in and for the Northern District of Florida.

In Admiralty.

JOHN DILLON

vs.

STEAMSHIP "STRATHEARN," Strathearn Steamship Company, Limited, a Corporation, Claimant.

The answer of the Strathearn Steamship Company, Limited, a corporation, incorporated and existing under the laws of the Kingdom of Great Britain, the claimant herein alleges:

1. It admits the facts set forth in the first paragraph of the libel, but it says that the schedule referred to therein does not set forth any rate of wages or any time of service as alleged in the first paragraph of the libel.

2. It admits the facts set forth in the second paragraph of the libel except that it denies that the libelant was at any

time discharged from the said vessel, and denies that there is due the libelant for his services the sum of One Hundred and Twenty-five Dollars as alleged in said paragraph.

3. It admits the allegations of the third paragraph of the libel except that it denies that said steamship was engaged in any domestic commerce within the United States.

4. It admits the facts alleged in the fourth paragraph of the libel except that it denies that the contract between the libelant and the respondent has become forfeited, null and void by reason of the facts set forth therein.

5. And further answering the claimant says that the said Steamship "Strathearn" is and was at all times mentioned in the libel a vessel of British registry and enrollment; that the port of registry of said vessel is and was at said times the port of Glasgow in Scotland, in the Kingdom of Great Britain; that the owner of said steamship is and was at all of said times the Strathearn, Steamship Company, Limited, a corporation, of Glascow, Scotland, incorporated and existing under the laws of Great Britain, the claimant herein; that the libelant is a subject of the Kingdom of Great Britain, and that the voyage, upon which the services mentioned in the said libel were rendered, commenced at the port of Liverpool, in England, and that the libelant executed the articles of agreement by which he agreed to serve upon the said vessel in the Port of Liverpool, in England, on the 8th day of May, A. D. 1916; that the libelant agreed to serve upon the said steamship on a voyage of not exceeding three years' duration, commencing at Liverpool, proceeding thence to Newport News and / or any other port within the limits set forth in said articles trading in any rotation, and to end at such port in the United Kingdom as should be required by the Master; that
12 the said voyage had been commenced but had not been concluded, nor had the libelant been discharged, at the time of the filing of the libel herein.

6. The claimant answering further alleges that prior to the filing of the libel herein the libelant on, to-wit, the second day of August, 1916, had left the said steamship without permission of the Master, and had remained away from the said steamship up to the time of the filing of the libel, and had failed and neglected while so absent without leave to perform his duties as a member of the crew of said steamship, and the libelant failed to return to his duties on the said steamship.

Further answering the libel, the claimant alleges:

7. That the libelant on or about the 8th day of May, 1916, entered into an agreement, copy of which is annexed hereto and marked schedule "A", in the port of Liverpool, England; and that the libelant and claimant and respondent understood that said agreement was to be governed by the laws of Great Britain and Ireland; that by the laws of Great Britain and Ireland said agreement is a valid and binding agreement upon the parties, as the same more fully appears by

the Act of Parliament of Great Britain and Ireland, known as The Merchants' Shipping Act of 1894 (57, 58 Vict. C. 60), an Act to consolidate enactments relating to merchants' shipping, 25th August, 1894. That said steamship at all times hereinbefore and hereinafter mentioned was seaworthy, properly manned, equipped and supplied, and that the libelant had no good or just cause to leave said ship, and said leaving was without excuse; and by the aforesaid Act of Parliament the libelant is not entitled to receive any wages or sum of money from the claimant or respondent by reason of the breach of the articles of agreement, marked "Schedule A", heretofore referred to. That by the said aforesaid Act of Parliament the wages of said libelant became forfeited; and claimant and respondent more
13 particularly refer to the following sections of said Act, and refer to the whole thereof with the same force and effect as if set forth at large, to-wit, the following:

Sec. 221. If a seaman lawfully engaged, or an apprentice to the sea service, commits any of the following offenses he shall be liable to be punished summarily as follows:

a. If he deserts from his ship he shall be guilty of the offense of desertion and be liable to forfeit all or any part of the effects he leaves on board, and of the wages which he has earned. * * *

Sec. 234. If a seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be an amount bearing the same proportion to the while wages or share, as a month or any other period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage or run; and if the whole time spent in the voyage or run does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Claimant and respondent refer to the law of Great Britain and Ireland as established by the decision of The Bulmer, 1 Hag. Adm. 163, and as more generally set forth in Abbot on Merchants' Ships and Seamen, 14 Ed. p. 269 et seq., and to the General Maritime Law of Nations as evidenced by the Ordinance of Wisbury, Art. 61; Ordinance of the Hanse Towns, Art. 43; Malloy Bk. 2 ch. 3 Sec. 10; French Ordinance Liv. 2 tit. 7; Des. Matelots, Art. 3; Abbot Merchant Ship & Seaman, 14 Ed. p. 269 et seq., Buttom v. Thompson, 4 C. P. 330; and, also the Laws of Nations.

The claimant and the respondent allege that the libelant forfeited his wages and is not entitled to receive anything from the claimant or respondent by reason of his desertion. The claimant and
14 the respondent also allege that in and by the law of Great Britain and Ireland the libelant was guilty of the offense of desertion. Said law is more particularly set forth in the Act of Parliament heretofore referred to and made a part hereof, and to the following decisions of the Courts of Great Britain and Ireland, and

reference to said decisions is hereby made with the same force and effect as if set forth at length and at large herein:

Buttom v. V. Thompson, 4 C P, 330.
The Baltic Merchants, 1 Ed. 86.

The claimant and the respondent further allege that none of the wages were earned by the libelant within the United States of America.

Further answering the libel, the claimant denies:

8. All and singular the premises contained in the fifth article of the libel, and especially alleges that there is no admiralty and maritime jurisdiction in the premises in this Court, and that the assumption of jurisdiction of the premises by this Court is a violation of the Constitution, treaties and laws of the United States, and that the Congress of the United States had no jurisdiction and no constitutional right to make laws governing the situation.

Wherefore claimant prays that libelant take nothing in the above entitled cause; that said libel be dismissed and the claimant recover its costs and charges herein with such other relief as may be just.

BLOUNT, BLOUNT & CARTER,
Proctors for Claimant.

STATE OF FLORIDA,
County of Escambia:

Before the subscriber, a Notary Public in and for said State and County, personally appeared Robert McKenzie, who being duly sworn, says that he is the Master of the Steamship "Strathearn", and agent of the Strathearn Steamship Company, Limited, a corporation; that he has read the foregoing answer, and that the facts stated therein are true.

R. McKENZIE,
Master.

Sworn to and subscribed before me, this 6th day of October, A. D. 1916.

ALICE K. DOW,
Notary Public.

My Commission expires April 21st, 1920.

"SCHEDULE A."

Agreement and Account of Crew.

Foreign-Going Ship.

The term "Foreign-Going Ship" means every Ship employed in trading or going between some place or places in the United Kingdom and some place or places situate beyond the Coasts of the United

Kingdom, the Islands of Guernsey, Jersey, Sark, Alderney, and Man, and the Continent of Europe, between the River Elbe and Brest inclusive.

Any Erasure, Interlineation, or Alteration in this Agreement will be void unless made with the consent of the persons interested, and attested by some Superintendent of a Mercantile Marine Office, or Consular or Colonial Officer.

Name of Ship—Strathearn.
Official No.—121282.
Port of Registry—Glasgow.
Port No. and Date of Register—104, 1905.
Registered Tonnage—Gross, 4,419; Net, 2,844.

Nominal Horse Power of Engine (if any)—352.
16 Registered Managing Owner or Manager:
Name—Burrell & Son.
Address (State No. of House, Street and Town)—54 Georges Sq. Glasgow.
No. of Seamen for whom accommodation is certified—45.

The several persons whose names are hereto subscribed, and whose descriptions are contained herein, and of whom nine are engaged as Sailors, hereby agree to serve on board the said ship, in the several capacities expressed against their respective names, on a voyage from of not exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude. Commencing at Liverpool—preceeding thence to Newport News and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the Master.

In all cases of salvage awards, notwithstanding anything herein provided the rating of Chief Officers shall be deemed to be the same as that of the Chief Engineer, the rating of the second officers that of the second engineer and the 3rd offs that of the 3rd Engs. Apprentices who have not completed two years' service shall be deemed of the rating of an O. S. and those Apprentices of over two years' service, the rating of an AB.

And the crew agrees to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their Superior Officers, in everything relating to the said Ship and the Stores and Cargo thereof, whether on board, in boats, or on shore; in consideration of which services to be duly performed, the said master hereby agrees to pay to the said Crew as wages the sums against their names respectively expressed, and to supply them with provisions according to the scale on the other side hereof.

And it is hereby agreed that any embezzlement or wilful or negli-

gent destruction of any part of the Ship's cargo or stores shall
17 be made good to the Owner out of the wages of the person guilty of the same.

And it is further agreed, that if any seaman enters himself in a capacity for which he is incompetent, he is liable to be disrated.

And it is also agreed, that the Regulations authorized by the Board of Trade, which are printed herein and numbered 166 are adopted by the parties hereto, and shall be considered as embodied in this Agreement. And it is also agreed, that if any Member of the crew considers himself to be aggrieved by any breach of the Agreement or otherwise, he shall represent the same to the Master or Officer in charge of the Ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require; and it is also stipulated that advances on account and allotments of part of the wages shall be made as specified against the names of the respective seamen in the columns provided for that purpose.

And it is also agreed, that

(*a*) Should any of the crew fail to join at the time specified, the Master may ship substitutes at once.

(*b*) Seamen and Firemen shall keep their respective forecastles clean and shall leave them so at the termination of the voyage, under a penalty of five shillings for each case of neglect.

(*c*) The Seamen and Firemen shall mutually assist each other in the general duties of the ship.

(*d*) The crew shall be deemed complete with 25 hands, all told, of whom not less than eight shall be sailors.

Firemen to keep galley supplied with coal. No cash shall be advanced aboard or liberty granted other than at the pleasure of the Master.

It is further agreed that in addition to the rates of pay herein mentioned, a war risk allowance at the rate of 40/-per calendar
18 month extra will be paid during the period of the present war to all ratings, except Officers and Engineers as arranged by arbitration and also 20/-per month only to Cooks boy—MR Stwd and Cabin boy.

In witness whereof the said parties have subscribed their names herein, on the days mentioned against their respective signatures.

(Signed) By R. McKENZIE,
Master.

On the 8th day of May, 1916.

Date of Commencement of Voyage—9/5/16.

Port at which Voyage commenced—Liverpool.

These columns to be filled up at the end of the voyage.

Date of Termination of Voyage.....

Port at which voyage terminated.....

Date of Delivery of Lists to Superintendent.....

I hereby declare to the truth of the Entries in this Agreement and Account of Crew, Etc.

—— ——,
Master.

(Signed on succeeding page.)

Signature of crew.	Age.	Nationality (If British, state birthplace).	Home address.
John Dillon	46	Kildare	39 St. Pauls Rd Seacombe
Hugo Ronlund.....	29	Russia	Sailors' Home Liverpool
J. Haikkala.....	26	Do	Do

19 *Particulars of Engagement.*

Ship in which he last served, and year of discharge therefrom.		Date and place of signing this agreement.	
Year.	State name and official No. or port she belonged to.	Date.	Place.
1916	Knight of Thistle.....	8/5/16	Liverpool
Do	Nigerca.....	Do	Do
Do	Hermes.....	Do	Do

In what capacity engaged.	Date and hour at which he is to be on board.	Amount of wages per week or calendar month.	Amount of wages advanced upon or at the time of engagement.
Carpenter	6 A. M. 9/5/16	9 . .	5 . .
Seaman.....	Do	6 . .	3 . .
Do	Do	6 . .	3 . .

Indorsement: Filed October 6, 1916. F. W. Marsh, Clerk.

On December 11, 1916, W. D. Howe, British Vice Consul at Pensacola, filed his application to intervene as amicus curiæ, in words and figures following, to-wit:

In the District Court of the United States in and for the Northern District of Florida.

JOHN DILLON

vs.

STEAMSHIP "STRATHEARN."

Now comes into Court W. D. Howe, and says that he is the British Vice Consul at Pensacola, Florida, and that by direction of the British Ambassador he applies to this Court for leave to intervene in the foregoing cause as amicus curiæ and as such amicus curiæ to submit a brief in this cause upon behalf of the British Government in regard to the construction, application and effect of the provisions of the Act of Congress known as the Seamen's Act, which provisions are invoked by the libelant in this cause.

W. D. HOWE,
British Vice Consul.

Indorsement: Filed December 11, 1916. F. W. Marsh, Clerk.

On the 11 day of December, 1916, the Court granted an order allowing the said W. D. Howe, as British Vice Consul to intervene as Amicus curiæ, which order is in words and figures following, to-wit:

In the District Court of the United States in and for the Northern District of Florida.

JOHN DILLON

vs.

STEAMSHIP "STRATHEARN."

This cause coming on to be heard upon the application of W. D. Howe, British Vice Consul at Pensacola, for leave to intervene as amicus curiæ and to submit as such amicus curiæ a brief on behalf of the British Government in regard to the construction, application and effect of the provisions of the Seamen's Act invoked by the libelant herein, and the court being willing to grant said application;

It is therefore ordered, that the said application be, and the same is hereby granted.

Done and ordered at Pensacola on the 11th day of December, A. D., 1916.

WM. B. SHEPPARD,
Judge.

Indorsement: Filed December 11, 1916. F. W. Marsh, Clerk.

On the 14th day of August 1916, came the respondent and claimant Captain Robert McKenzie, and the said libelants John Dillon, Hugo Roulund, John Hoikkala, with their witnesses and proctors before the duly appointed commissioner to take the testimony in said case, and the following testimony of said witnesses were taken in said cause, to-wit:

In the District Court of the United States for the Northern District of Florida.

JOHN DILLON	Libel in Rem. for Wages.
v.	Filed Aug. 2, 1916.
BT. S./S. "STRATHEARN."	
JERONIMO CASALICE	
v.	Dismissed, Aug. 15, Ditto Ditto
BT. S./S. "STRATHEARN."	
HUGO RONLUND	
v.	" "
BT. S./S. "STRATHEARN."	
JOHN HOIKKALA	Filed Aug. 3, 1916 " "
v.	
BT. S./S. "STRATHEARN."	

22 Be it remembered that upon the 14th day of August A. D., 1916, came the Respondent and Claimant, Capt. Robert McKenzie, Master of the said Steamship, accompanied by his proctor, Judge F. B. Carter, of the firm of Blount & Blount & Carter, to give his testimony in the said cause. There was also present and testified for the Steamship, John D. Spence, Chief Engineer, and Albert Holmes, Second Mate, Proctor for Libelants was also present, and took the testimony of Libelants, John Dillon, Hugo Ronlund and John Hoikkala. All witnesses were duly sworn by commissioner A. G. Chipley.

It was agreed that the testimony now to be taken by consent of parties, may be used, so far as applicable, in each of the cases pending against the said S./S. "Strathearn." Said cases being above set out.

Captain Robert McKenzie.

Direct examination.

By Judge Carter:

Q. What is your full name?
A. Robert McKenzie.
Q. What connection have you with the S./S. "Strathearn"?
A. I am Master.
Q. Have you with you the Shipping Articles of the Libelants in these cases?
A. Yes.
Q. Where was this document that I have asked you about signed by these men?
A. In Liverpool, England.
Q. Are any of these men citizens or residents of the United States?
A. No, sir.
Q. They are all foreigners?
23 A. All foreigners.
Q. Of what nationality is the "Strathearn"?
A. British.
Q. Is she registered and enrolled under the British laws entirely?
A. Registered in Scotland. Call that British.
Q. Glasgow, Scotland, you mean?
A. Yes.
Q. Has the "Strathearn" within the last two years been doing any coastwise trade between ports in the United States?
A. No, sir.
Q. Since those Articles were signed, where has she been doing business?
A. We came up in ballast to Newport News, and bunkered there, and went to the West Coast of South American, Megillones, Chili, and loaded there for this port.
Q. So, that when you reached Pensacola, it was the first port in the United States where you were to unload anything?
A. Yes.
Q. And when did you reach Pensacola?
A. We arrived in Pensacola on the 31st of July, 1916, and came alongside that evening, about 5 o'clock.
Q. When did you begin to unload?
A. Half past seven the next day, the 1st of August.
Q. On the morning of the 1st, Captain, were these men (the Libelants) working on the ship?
A. No, sir.
Q. How about the Carpenter, was he there that day?
A. The Carpenter was working on that day, the other three were not working.
Q. Of the other three, was Jeronimo Casalice known as the donkeyman?
A. Yes; and the other two were sailors.

Q. The other two were sailors?
A. Yes.
Q. Was there work for them to do on August 1st?
A. Yes, the usual work.
24 Q. Did they, or any of them, apply to you before they left the ship for any part of their wages?
A. None, whatever.
Q. How long was it after they first left the ship, and ceased working, before they made application for wages?
A. Not before evening, and I think it was the next day, the 2nd.
Q. The evening of the second day?
A. The 2nd of August, that was the first time any of them suggested anything about wages, about money.
Q. What did they ask for; full or half wages?
A. To be paid off.
Q. Then, at any time after that, Captain, did they come and demand half wages?
A. After been ashore. They came on board, and wanted to know, under Section something or other, if I would give them half wages.
Q. What day was that?
A. The evening of the 2nd.
Q. But they at first demanded of you to pay them off?
A. To pay them off.
Q. That was the evening of the 2nd day, after they had quit work and later on they came back, and asked under Section of the United States Laws, if you would pay them half wages?
A. Yes. The Carpenter went ashore without liberty. Did not ask. Said he was going to see the Consul; and remained away all day, and did not go to work until after nine o'clock.
Q. Did he, at any time, make demand on you to pay him off?
A. Not then.
Q. Did he afterwards?
A. Afterwards.
Q. What day was that?
A. The next day, the 2nd; that evening. The evening of the 2nd, or else it was the morning of the 3rd.
Q. Captain; these men, all four of them, did they leave the ship without your authority or consent?
25 A. No consent from me.
Q. You did not know anything about their being gone, only that they were gone?
A. No.
Q. Will you state how much—have you a statement of the amounts that were due to these men—the amount that is due to these men by the ship; that is, if anything is owing to them?
A. Yes.
Q. Let me see that—(hands statement to Judge Carter).
Q. What is the item of Law Expenses that you have here?
A. That was arranged with Mr. Yonge. Covers costs, $25 each case, if the cases were settled.
Q. Outside of the "Law Expenses", are the other items in the account correct according to your knowledge?

A. Yes.
Q. What is the value of a lb. in American money?
A. $4.78.
Q. And what is the value of a shilling, American money?
A. A shilling, $23.99.
Q. And a penny?
A. 2 cts.

Cross-examination.

By Mr. L. W. Nelson:

Q. Did these men, Captain, ask you for any money at all when they reached this port?
A. No. When we came in here, after they had been ashore, probably a whole day, or it was the next morning, they asked me for money, but they asked for no money when they came in here.
Q. Did they ask you for any money to buy clothes?
A. No.
Q. They did not have any money when they reached this port?
26 A. No, had no money. These men (if you will excuse me) These men got money in Megillones, South America, for clothes, matches, and such things. The three of them were off for two days. I gave them money to buy clothes.
Q. The 2nd day, did they make demand on you for money?
A. The second evening.
Q. They were still in your employ at that time.
A. Yes, but had not been working.
Q. They simply came ashore?
A. Came ashore, and did not ask any leave; were not working.
Q. Was that anything unusual upon reaching a new port?
A. Yes, they have no right to leave the ship without my permission.
Q. Then these seamen never leave a vessel without permission when they reach a port?
A. Not supposed to. Supposed to get permission before they come ashore.
Q. While that is the rule, they frequently do go without permission and return.
A. We don't say anything at all about that probably, so one-half of the crew remains on board of the vessel, and provided they are at work the first thing in the morning.
Q. Then in the afternoon, when they returned and demanded one-half of their wages, they were still at that time—were they not still in the employ of the ship.
A. They were in the employ of the ship, but were not on duty.
Q. They were simply not working.
A. Were not doing their work; not on their duty. Any employee on the Articles, still in employ of the ship.
Q. You did not pay them anything at all while in this port?
A. No.

Q. When they demanded one-half of their wages, what did you say to them?

27 A. All to get money on Saturday. I told them, if any wanted any money to send home, either give an order on the owner, or put them in the way of sending it home.

Q. After they had libeled the ship for their wages, did you agree to pay them if they would dismiss the libels?

A. No. I was going to pay the donkeyman off, if he had not libeled the ship, and had his amount of wages made out before the Consul; but he never came near the Consul until he libeled the ship. After they libeled the ship, I gave them no money.

Q. When these men asked you for money, and failed to get it, they went off to the Consul, did they not?

A. No, they went to the Consul before they came to me about money.

Q. They went to see him with reference to their money?

A. To get paid off.

Q. Did they tell you they had been to see the Consul?

A. No, but I saw the two sailors in the Consul's office, and the Consul advise them to go on board of the ship, and work, and that they would get their money when they started to work.

Q. Had they made any demand on you for money before they reached this port?

A. Yes, and they got it.

Q. How long before you reached this port?

A. The 3rd of July.

Q. They did not receive any more money after that until this time?

A. No. They don't receive money at sea; and when they received their money down in South America, they were off duty for two days.

Redirect examination.

By Judge Carter:

Q. Captain, if I understand you, when you paid them off—they got their money—at this place in South America after they got their money, they did not go back to work for two days?

28 A. No.

Q. After you got here (as I understood), they did not work on the first day of August, and they did not work on the second day, and they did not say anything to you about money until the evening of the second day?

A. Either the evening of the second. I don't think it was the first of August. When they came back the two sailors were under the influence of liquor. I did not see them until the morning of the second.

Q. Did they say anything to you at all until the evening of the second day after they had quit work.

A. Yes.

Q. And then they demanded to be paid off; and later, came back, and asked for half money, under some Section of some Statute?

A. Under some Section.

Q. And did you say that they were absent without permission?

A. Yes, I told them if they went about their work, all would get money on Saturday; and if they wanted money to send off, I would either give them an order on the owner, or see that they were in the way of sending this money home.

Q. Mr. Nelson asked you about clothes. What about clothes?

A. They want me to give a tailor. On principle, I don't give a tailor. They go ashore there. You will not see them go off at all. A tailor, many times they demand money from the tailor. "Well, I will not take anything from you unless you do that," I told them I give you the money, and you can buy in the cheapest market. One asked about clothes.

Q. Only one asked you about clothes.

A. Yes.

Q. You told them you would give them the money, and they could buy their clothes.

A. Could get the money on Saturday, and they could buy the clothes in the cheapest market.

29 Recross-examination.

By Mr. Nelson:

Q. After that—after they asked you for money, or made demand, did they work any more on the ship?

A. No more. The Carpenter has been off altogether six days altogether, and now is off again. Been back and forth, and was in jail for four or five days.

Q. Has he not been on the ship since?

A. He came aboard of the ship on Friday night last, and worked on Saturday. Saturday was a short day with the Carpenter. They worked until one o'clock.

Q. You permitted him to go back on the ship?

A. Oh, I never stopped him from going back on the ship.

Q. The time that you paid them off on the 3rd of July——

A. I did not pay them off. I simply gave them what money they wanted. That is not paying them off.

Q. And they were off two days, did you deduct for those two days.

A. No. Cannot make a fuss on board ship. Bad policy on the Master part if he goes logging on the first part of the voyage, if he can avoid it. I told them they could get no money during the week. On Saturday, if they get drunk they have an opportunity to get sober before Monday morning.

Q. That is what I meant when I asked you a while ago, if it was anything unusual for sailors to go off when reaching a new port, for a day or two, and have a good time.

A. Never.

Signature waived.

See later testimony of Captain.

John D. Spence, Chief Engineer.

Direct examination.

By Judge F. B. Carter:

Q. What is your name?
A. John D. Spence.
Q. What position do you hold on the s/s "Strathearn"?
30 A. Chief Engineer.
Q. Do you know Jeronimo Casalice, who was the donkeyman on the "Strathearn"?
A. Yes.
Q. Do you recall the time when you all arrived in Pensacola?
A. Yes.
Q. What day of the week and month was it?
A. Monday, the last day of July.
Q. Did Jeronimo Casalice work on Tuesday?
A. No, sir.
Q. Was there work for him to do on Tuesday?
A. Yes.
Q. Has he worked any since that time?
A. No, sir.
Q. Has there been work on the ship for him to do since that time?
A. Yes. All the while; the whole time.
Q. Under whose direction are the men called out to work; would he be called out to work; this donkeyman; under whose direction?
A. My direction; yes.
Q. And you know, as a fact, that he did not go to work the next morning after you arrived here, and has not worked any since?
A. He would not work for me.
Q. And has not worked on the ship any?
A. Has not worked since.
Q. Do you know whether the Carpenter and the two sailors who have sued out these libels, have worked any since that morning?
A. I do not know.

Cross-examination.

By Mr. Nelson:

Q. It was understood that the donkeyman was to be paid off at this port, was it not?
A. Did I understand that?
Q. Yes.
31 A. No; I did not understand that.
Q. There was no agreement that he was to be paid off at this port.

A. There was no agreement between he and I regarding that.
Q. Were all the other men on the ship working at that time?
A. All my men were; yes.

Signature waived.

Albert Holmes, Second Mate.

Direct examination.

By Judge Carter:

Q. What position do you hold on the S/S "Strathearn"?
A. Second Mate.
Q. Do you know of a man by the name of Casalice, and another by the name of Hoikkala, who have sued out libels against the S/S "Strathearn"?
A. Yes, they worked there, seamen.
Q. That is what we usually understand as sailors?
A. The same thing as a sailor.
Q. Do you recall when you got into this port?
A. July 31st, in the evening.
Q. Was there work for these men to do on the ship the next day?
A. Yes.
Q. Did they do any work?
A. No.
Q. Have they been back to do any work since that time?
A. Not to do any work; been back and forth to the vessel. Never been to work since that day.
Q. Do you know about the Carpenter and the Donkeyman, whether they have done any work?
A. Not the donkeymen.
Q. How about the Carpenter?
A. Been off and on since then; can't state the dates.
32 Q. Did he work on last Saturday; you don't remember?
A. No; not under my supervision.

Cross-examination.

By Mr. Nelson:

Q. The Carpenter has been working today?
A. Been working; started this morning. I see him outside there now.

Signature waived.

Captain McKenzie recalled.

Direct examination.

By Judge Carter:

Q. When do you expect to sail?
A. Expect to sail on Wednesday.

Q. And you and Mr. Spence and Mr. Holmes are all officers on that ship and expect to sail that day?
A. Yes; Wednesday morning.

See later testimony of Captain.

Testimony Taken for Libelants.

Hugo Ronlund, Libelant.

Direct examination.

By Mr. Nelson:

Q. What is your name?
A. Hugo Ronlund.
Q. You were a seaman on the S/S "Strathearn" were you?
A. Yes.
Q. Were you in the employ of the ship and its Master when you reached the port here in Pensacola?
A. Was I employed? Yes, I was.
33 Q. What happened when you reached the port here?
A. Reached here Monday night, about five or six o'clock; and the next morning, had some misunderstanding with the Captain about Union time, work time. The Captain does not go by Union Rules; We are Union men, and left my work about eight o'clock after breakfast, and went to the English Consul's; me and the Boatswain and another two sailors. Couldn't do nothing about this Union. Couldn't do nothin; only to see the Captain. That same night when I saw the Captain and asked for money, Can't give you any now; maybe can give you some Saturday. Can't we get some clothes? Have no clothes to put on me. No; not now, maybe Saturday can give you some money. I left my work after breakfast and went to the lawyer. Asked the Captain for half of my wages and then I went to my lawyer to take the case for me. The Captain refused to pay me.
Q. You asked him, you say, for money to get some clothes with?
A. Yes.
Q. And you could not get any money.
A. No.
Q. And then you heard about this Seaman's Act?
A. Yes.
Q. And then you went to see a lawyer?
A. Yes.
Q. And then you libeled, and made demand for one-half of the wages due you?
A. Yes.
Q. And the Master told you you would get nothing?
A. Refused me.
Q. Had you quit work up to that time?
A. Two days before. After the ship came, I left the ship. I worked from six o'clock to breakfast time. I quit that time to go to see the Consul, and see the lawyer. I refused my work after that. I asked the Captain for half of my earnings.

Q. You first went to the British Consul, and you got no relief?
A. No, see the Captain first.
34 Q. And it is not true that you quit work on the ship until after you had made this demand?
A. The Captain told me, you refused your work. I go to find out my rights I have on the ship. I refuse no work. I went into town. We finish work after five o'clock in the evening and then no place to go.
Q. You libeled the ship for $95.00 as being due you?
A. I didn't know exactly the United States money. We have English wages. About $95.00.
Q. This is approximately correct?
A. Yes, around that. I don't know American money.
Q. This demand for one-half of your wages was made here, in Pensacola, after the ship had reached this port?
A. Yes.
Q. Had you made any other demand before that for wages?
A. All hands asked on board.
Q. When had you received money before this?
A. I asked the next night.
Q. You don't understand me. When did you last receive money; when was the time?
A. In Megillones, Chili, about one-half.
Q. The last you received?
A. Yes, about $3.00, American money.
Q. Did you ask for some money to go ashore with as soon as you got there?
A. Not the same night, the next night.
Q. You never got a cent?
A. He said; if you behave, maybe give you some Saturday. Asked for a dollar.
Q. To buy clothes?
A. No; I give you no dollar, I give you something Saturday night. That is all.
Q. John Dillon and John Hoikkala, and Jeronimo Casalice, they also libeled for their wages; what demand, if any, did you hear these men make to the Master for one-half of their wages due them; here, in this port? These men, I have mentioned? Did they make any demand for one-half of their wages?
A. Yes; one-half of their earnings.
35 Q. Were you present?
A. Yes; the Captain refused every one of them.
Q. And paid them nothing?
A. Oh, he said, maybe give some afterwards, and then said I give you no money at all.

Cross-examination.

By Judge Carter:

Q. You got here to Pensacola on the last day in July?
A. Yes.
Q. Is it not a fact that you did not work the next day?

A. I worked until breakfast. I told the Captain, I don't refuse my work. I need time to go to town, and see a lawyer, and get things clear. Half past six I went ashore.

Q. Did you ask permission to go ashore?

A. No. I told him I am going to the Consul to see what he says about things.

Q. Says about what?

A. The understanding. The Union work. The time off. We belong to the Union, Sailors' Union.

Q. You and these other men you have been talking about, belong to the Union.

A. Yes.

Q. What is the difference between the Union Rules and the Rules the Captain wants to work by?

A. Union Rules, 7 to 5 in the evening.

Q. That is, you would work only during that time?

A. The Ship's Rules, from 6 to 6. The Union Rules from 7 to 5, and finish always at 5; but on the ship's time, had to use 6 to 6, and on shore, the Union Rules is to start at 7, and the ship rule to start at 6.

Q. Those are the Union Rules in Pensacola, in the port here?

A. Yes. We heard about Union Rules before. Asked the Captain to let us go on the Union Rules.

Q. Were you a member of the Pensacola Union? Rules that would force you not to do that work?

36 A. No Branch in this town. British Firemen's and sailors' Union. A Branch in Mobile.

Q. How did you find out when you got here that they wanted you to comply with Union Rules?

A. In Pensacola before.

Q. There is nothing in your Shipping Articles about Union Rules?

A. Nothing at all. Nothing about working time at all. When I signed the last Articles. I asked about over time and everything. Nothing about over time in these Articles.

Q. What last Articles are you talking about? These ones you signed for this ship.

A. Yes. I signed these Articles (Shipping Articles shown to Witnesses by Judge Carter). Yes. one of these Articles hanging on the Forecastle wall. That says nothing about over time work.

Q. You say, that you went to the Captain that morning at breakfast time?

A. A little before breakfast time, before seven o'clock.

Q. You told him you wanted to work by the Union Rules?

A. Yes.

Q. And he told you you must work by the ship's rules?

A. Yes.

Q. You then said you would have to go to the Consul and see about it?

A. Yes.

Q. And then you left the ship without permission.

A. Yes. I told the Captain I wanted to see the Consul.

Q. Did he tell you you could go? You left without his permission?

A. Yes. He said to go to work.

Q. You left without permission, to go to see the Consul, and he said to go to work?

A. Yes. I didn't leave without permission. I only told the Captain.

Q. You say you left the ship without his consent?

A. Yes.

Q. You did not go back to work any more that day?

37 A. Yes.

Q. You did not go back the next day?

A. Yes. When we returned to; half past six, I don't know exactly.

Q. You worked the next day until breakfast time?

A. Yes. And then I went to see a lawyer, to find out about this new law in America.

Q. Where did you find out about this new law?

A. At the tailor. He had this law, and showed me. Have a right to claim half your wages in the United States of America.

Q. Have you worked since that time?

A. No sir.

Q. Then, from the time you got here, you have only worked until breakfast time on the first and second day, and you have not worked any since that time?

A. No, not since I asked for half my wages, I have not worked at all.

Q. What time did you go back to the ship on the second day, to ask about the wages. Late in the afternoon.

A. Yes, four o'clock.

Q. Had you asked him before that time for your wages?

A. Asked for money. The firemen and sailors went to ask him on Tuesday night. That was the first day the ship worked; started to work Tuesday night.

Q. You say on Tuesday you went to him, and asked him for wages?

A. Asked for some money. He said, maybe Saturday.

Q. Did you ever go to him and ask him to pay you off?

A. Yes.

Q. When did you ask him that?

A. When the ship came here. Does not work by the Union Rules, to pay me off.

Q. That was the first day and then you asked him to pay you off?

A. Yes.

Q. And these other men did the same thing?

38 A. Not the Carpenter.

Q. All except the Carpenter and yourself?

A. It was four men went to the Consul.

Q. Four men went to the Captain, and asked him to pay them off?

A. No, I only asked about the Union Rules myself.

Q. Did you not say these other men were there?

A. Me, and the other men.

Q. And when he said he would not follow the Union Rules, you asked him to pay you off, that was the first day?

A. Yes.

Q. Were these other men with you at the time, and they all asked him to pay them off, when he said he would not work by these Union Rules, you and the other two were there, but not the Carpenter?

A. The other sailors.

Q. You all, except the Carpenter, asked to be paid off, if he would not work under the Union Rules?

A. They only asked the Captain to go by the Union Rules, I asked to be paid off; and Anderson asked to be paid off.

Q. You don't know whether Dillon asked to be paid off, or to use the Union Rules?

A. Yes, Dillon at the same time asked to pay him off.

Q. When was that, the first day?

A. I don't know, I was not present. He only told me. He said he had no room to stop. He is supposed to be in the room with the Boatswain.

Q. How about John Hoikkala, he asked him to pay him off, at the same time you did?

A. No, afterwards. He was sick. The same day I did.

Q. How about Jeronimo Cassalice?

A. He asked the Captain, I suppose, before I asked him. He was not there when I asked him.

Q. You went to the Captain before breakfast on the first day that the ship worked?

A. Yes.

Q. And asked him to work under the Union Rules?

39 A. Yes.

Q. He said he would not do it?

A. Yes.

Q. And you asked him to pay you off, and he said he would not do it? And you went to the Consul, and did not work any more. And the next morning you worked until breakfast time and then left again, and you never have worked any since?

A. No, sir.

Q. Now, then, the evening of the second day, about four o'clock, you went back to the Captain and asked for half of your wages, and he refused to pay that?

A. Yes.

Q. You had not been working except until breakfast time that day, or the day before, and you were off without the Captain's leave?

A. Yes.

Q. What kind of work until breakfast time did you do those two mornings?

A. I was down in the aft hold, with the lifting up of the ventilators.

Q. Both mornings?

A. No, on the first morning.

Q. What kind of work besides the ventilators?

A. Nothing, big heavy ventilators.

Q. You were still working on the ventilators when breakfast came the first morning?
A. Yes.
Q. And on the second morning?
A. Worked around the deck.
Q. What were you doing the second morning?
A. I don't remember what I was doing.
Q. Is it not a fact, that you did not work any either of these mornings, either one of those two mornings?
A. I did work.
Q. How about these other men, did they work to-?
A. Yes, all worked.
Q. The men I have asked you about?
A. Yes.
40 Q. Did Dillon work?
A. Yes.
Q. You say you worked both mornings, but quit at breakfast time.
A. Yes.
Q. But, later in the day time, you went to see the Consul? Did he work that second day?
A. No, sir.
Q. You don't know?
A. No.
Q. You only know he was working the first time up to breakfast time?
A. I don't know. Maybe he worked.
Q. I will ask you now; Was Dillon there up to breakfast the first morning?
A. Yes.
Q. How about Jeronimo Casalice?
A. He refused to work at all.
Q. How about John Hoikkala?
A. The same as to the others. I see him going around the deck.
Q. Up until breakfast these two mornings.
A. Yes. He went ashore with me to see the Consul. I met him ashore. Gone to see the lawyers.
Q. Which one asked for half of his earnings first, you or Hoikkala?
A. Me, and the donkeyman were the first.
Q. And then did Hoikkala go that same evening?
A. The same time and Dillon, and Hoikkala the next day.
Q. Dillon? Did he go with you?
A. The same time, the second day.
Q. When you and the other men left on the second day, did you leave without Captain's permission?
A. Yes.
Q. Did not ask any permission at all?
A. Yes.
41 Q. The first morning, he said to go to work, when you asked to go to the Consul, he said to go to work on the ship?
A. Yes.

Redirect examination.

By Mr. Nelson:

Q. Was it anything unusual to leave the ship, and go ashore, without the expressed leave of the Master?

A. Well, I don't know. I heard what the law is on the ship. When a ship goes to the dock, the fellows have a right to go to the Consul and ask for his rights. Along if the Captain, refuses, go always, go to see the Consul.

Q. It was your understanding that a seaman had a right in the absence of the expressed permission of the Captain, to go to see the Consul?

A. Yes.

Q. Did you go to see the Consul with reference to this Union you have talked about, or with reference to getting some money?

A. I wanted to ask the Consul to get these clear between the Captain and me, with reference to the Union Rules; and then another understanding with the Captain about being paid off.

Q. If the Captain had complied with your demand, you would have carried out your contract, would you not?

A. When I heard what the United States law was, I asked for one-half. I am not going to work any more. I have finished.

Q. You say you worked a part of each day?

A. I said I have not been working since. The Captain said I don't work enough for my food, when I work until breakfast time.

Q. Did the Captain tell you he objected to your going ashore?

A. The Captain said to go to work.

Signature waived.

42 John Dillon, Libelant.

Direct examination.

By Mr. Nelson:

Q. You were the Carpenter on the S./S. "Strathearn" until she arrived here at this port, were you?

A. Worked until this morning and I am now.

Q. When did you receive any money prior to reaching this port?

A. First on the West Coast of South America; Megillones, Chili.

Q. How long ago?

A. It would be quite two months now.

Q. Have you received any money since reaching this port?

A. Not one cent after reaching this port.

Q. What demand, if any, did you make for your wages, or any part of them?

A. I asked the Captain, in the presence of one of these sailors, to give me one-half of any money due to me to date.

Q. What did he say?

A. He said, "no".

Q. You were in the employ of the Master up to that time?
A. I am at present.
Q. Have you been working to-day on this ship?
A. I worked this morning before breakfast.
Q. Then when you made demand for one-half of your wages, and the Captain refused to comply with it, you libeled the ship?
A. Yes.
Q. You claimed earnings of $125.00; is that approximately correct?
A. Approximately correct. That is so.
Q. Do you remember that day you made demand for one-half your wages?
A. On the third day after we arrived. We arrived on Monday. A fortnight from to-day.
43 Q. And it was on Wednesday that you made claim?
A. Yes.
Q. Is the vessel due you your wages from the time this libel was taken out until now, until to-day? Or were you just working along to keep yourself in practice?
A. I was working there because we had made a claim for half day wages. I am a stranger here, and I cannot go ashore without means; so I continued on the ship.
Q. To get food and lodging?
A. Food; lodging and work.
Q. Did anybody else made demand for one-half their wages that were due them at that time?
A. The same time as myself? Hugo Ronlund.
Q. Who were the others?
A. John Hoikkala. I was not there when he made the demand, but I think he has made that. I am not sure.
Q. John Casalice?
A. Yes, he made it before any of us.

Cross-examination.

By Judge Carter:

Q. You got here on Monday night the 31st of July?
A. Yes.
Q. Did you work the next day?
A. Yes.
Q. All day?
A. All day Tuesday.
Q. How about Wednesday?
A. Wednesday, I went to see the Consul.
Q. Did you work Wednesday?
A. Wednesday morning up to breakfast time.
Q. Then you went to see the Consul.
A. Yes.
Q. What did you go to see him about?
A. About trouble I had on board. The Boatswain would not allow me in my room.

Q. You did not work any more that day?

44 A. Not Wednesday; because I went afterwards to see the lawyer. The Consul did not give me any satisfaction.

Q. Did you work Thursday?

A. Yes.

Q. Been working since?

A. Thursday, Friday and Saturday. A week to-day, I went ashore to see my lawyer again, and had some trouble with one of the fireman. He struck me, and a policeman arrested both of us.

Q. Where did you have trouble with the fireman? On the street?

A. In a saloon.

Q. On the streets of Pensacola?

A. Inside, when he struck me.

Q. It was not on the ship; in Pensacola.

A. No sir, in jail.

Q. You got in the Police Prison?

A. Yes.

Q. What days?

A. From Monday to Friday, Tuesday, Wednesday, Thursday, Friday, four days.

Q. The first week you got here, you say you worked Tuesday, Thursday, Friday and Saturday?

A. Yes.

Q. Did you work all day those days?

A. Yes.

Q. Well, now, where did you get the money to buy the liquor which got you into prison? Did the Captain give it to you?

A. When I went ashore on Monday, I had 40 cts.

Q. Did the other men have any?

A. I don't know what; four of us. The Chilien fireman had some money.

Q. Did you not go back to the Captain on Tuesday, and ask him to pay you off, because you could not get along with the Boatswain?

A. Not Tuesday, on Wednesday. No.

45 Q. Did you complain to the Captain about the boatswain?

A. Yes; about work privileges at sea.

Q. You went to see the Consul on Wednesday about that?

A. Yes.

Q. And you did not work any more after that?

A. No more Wednesday.

Q. When was it you went to the Captain, and asked for half wages?

A. On Wednesday morning.

Q. What time?

A. Twelve or one o'clock, something like twelve or one o'clock.

Q. On Wednesday, you went to the Captain, and asked for half wages?

A. Yes.

Q. Who told you you could get half wages?

A. The two sailors.

Q. Who had quit?

A. They were ashore.

Q. Did they not tell you they had quit?
A. No.
Q. Had quit on account of Union Rules?
A. No.
Q. Did you ever hear anything about Union Rules?
A. Only from the fireman on Saturday, about a week after.
Q. You did not have any talk with the Captain about Union Rules until Saturday?
A. No.
Q. You did not quit on account of Union Rules?
A. No.
Q. You have not quit?
A. No, sir, I am working this morning.
Q. Did you not quit Wednesday; did not work any at all after breakfast?
A. Went to see the Consul. It was Wednesday afternoon before I finished.
Q. Did you sit there all morning with the Consul?
46 A. Sometime with the Consul, and then I went to see the lawyer.
Q. Was that before you went to see the Captain?
A. Yes. And the Consul said "There is your room. It is up to you to take it." The Captain said the same. The Boatswain had a knife.
Q. Was that at sea?
A. At sea. The Consul said: There is your room, you can go take it. No; He kept it locked.
Q. What room did you take when you went back?
A. In the firemen's forecastle for several days on a hatch; anywhere.
Q. You quit at 8 o'clock on Wednesday morning?
A. Yes.
Q. You came direct to Mr. Howe, the Consul?
A. Well, I did not go ashore until nine o'clock.
Q. Did you go on up to Mr. Howe then?
A. I did not go direct, I had to walk around.
Q. Was the first place you went to Mr. Howe's? How long did you stay at Mr. Howe's?
A. A half hour before he came.
Q. How long after?
A. Twenty minutes to a half hour.
Q. What did he tell you, to go take your room?
A. The same as the Captain. The room is there; to take it.
Q. You did not go back direct to the sip [ship]?
A. No, I saw these other fellows, went to see Mr. Nelson.
Q. Was that the first time, they had not mentioned it to you before?
A. No.
Q. Where did you meet them, on the street?
A. Yes.
Q. What did they say to you?

A. Go to see a lawyer.

Q. About your own business, how came you to go off, you did not have any business?

47 A. Very uncomfortable on the ship; very intolerable for me.

Q. Why did you go to see the lawyer?

A. See what he would advise me about getting the room.

Q. Advise you about the half wages?

A. Yes.

Q. So, instead of going back to the ship about your room, you followed them up to the lawyer's office, to see about half wages?

A. I slept on the ship that night.

Q. You did not see the Captain that night?

A. No sir, not until the next day.

Q. I mean from the time you knocked off after breakfast, you did not see him until the next morning?

A. Yes.

Q. About seven o'clock.

A. I don't know when I spoke to him.

Q. You said you spoke to him about wages?

A. On Wednesday, the same day I went to see the Consul, I asked for half wages to date.

Q. That was after you went to see Mr. Nelson.

A. Yes; it was after dinner.

Q. You went back to the ship, and asked for half wages, and then came back to town. You did not go to work?

A. Yes, after he had said no.

Q. Did he say anything about money?

A. Give it on Saturday.

Q. Did he say anything that time about some money on Saturday?

A. He said, would not get any.

Q. Did he say anything to you to that time?

A. Yes, he told me on account of suing out a writ, would not get any money.

Q. Did you hear him say anything to the other men about letting them have some money on Saturday?

A. No.

Q. You never heard anything about that?

48 A. No.

Q. Was it not the donkeyman that was stabbing you with the knife?

A. No, the boatswain. The Captain got that mixed up; that was not what I said. The donkeyman did not have any knife at all.

Q. He had no knife?

A. No. I don't know what he would do, and would not do.

—. ——.

A. He says he never threatened anything of the kind. It was the boatswain.

Q. You are still working there in pursuance of your agreement or Articles?

A. All work going on, just the same.

Q. Under these same Articles?

A. Yes.
Q. And you have been doing that except this one day that you were off?

Redirect examination.

By Mr. Nelson:

Q. I believe, you said that you did that simply to have a place to get food and sleep, and you are expecting to pay for it?
A. I leave that to your advice.
Q. This boatswain; how long have you been having trouble with him?
A. Him? Almost from the beginning. Had not been out a week before commenced finding fault with the Russian sailors.
Q. He was the man you had trouble with? Was he an officer over you?
A. The next petty officer under me. I am rated before him on the ship's Articles.
Q. Did he make any charge?
A. No charge. Stood at the door with a knife that long like, said he would do us up if any attempted to get in the room.
Q. Did you tell the Captain?
49 A. Yes. He said the boatswain would not do anything. He said the room is there to go take it. That is what the Consul told me, to do the same.
Q. You said you could not get in the room?
A. Because the door was locked.

Signature waived.

John Hoikkala, Seaman.

Direct examination.

By Mr. Nelson:

Q. You are one of the seamen on the Ship "Strathearn"?
A. Yes.
Q. And upon reaching this port here in Pensacola, what demand, if any, did you make for some money? Did you ask the Captain, or Master, for any money?
A. Yes.
Q. When was the first time?
A. The first time, Tuesday morning.
Q. Did you ask him for money the day you reached here, or not?
A. No.
Q. The next day?
A. The next day.
Q. What did the Captain say?
A. He said give it to me Saturday.
Q. He would not give you any?
A. He said give me some Saturday.

Q. Didn't he tell you how much?
A. Yes sir, said we wanted half.
Q. How long had the ship been here in this port then?
A. Two days, or three. Two days.
Q. And you made demand on the Master of the S/S "Strathearn" for one-half your wages, did you not?
A. Yes.
Q. And he refused to give you any?
50 A. Yes.
Q. Then you libeled the ship?
A. Yes.
Q. You have libeled the ship for $100.00, is that approximately the amount?
A. Yes.
Q. Had you quit working on the ship, or violated any of its rule, up to that time that you made that demand? You had been working on the ship up to that time that you made this demand, and the Captain refused you, to give you one-half of the wages, had you?
A. I worked Tuesday morning, from 7 to 8, and afterwards I hurt my ribs, and went into town to get a doctor.
Q. Did you get a doctor?
A. Yes.
Q. Did the Captain agree to that?
A. Yes.
Q. Was that the reason you did not work those days?
A. Yes; my ribs hurt. Didn't know whether they were broke or not. That was Wednesday. The Captain said, you three fellows all the time in trouble. Take you before the British Consul. All the time trouble on the ship. You didn't do this work so long you been in the ship working.
Q. As I understand, on account of your injury, you did not work those days?
A. A sick man.
Q. Then you went and demanded one-half of the wages?
A. Yes. Before on Thursday, on Wednesday, said to have it on Tuesday; get rid of you. I didn't work nothing, the Captain say. I get clear of you three fellows, Hugo Ronlund, and Hoikkala, and the donkeyman; The Captain said I didn't pay him no how. I said I don't ask any pay. I didn't ask nothing. That fellow said, I didn't ask pay. The Captain said, go to work, don't play like. Too busy. Go to work. I said, all right, Captain, and the next morning, I asked for my wages. The Captain said, "no".
Q. You did work the day before?
A. Yes, in the morning when I got hurt.
51 Q. Who else made demand for one-half of their wages at that time?
A. The donkeyman; Hugo, and the Carpenter the day before.
Q. At the time you made your demand; John Casalice; Hugo Ronlund and John Dillon made demand for one-half of their wages due them?
A. Yes.
Q. And the Captain refused to pay them?

A. Yes.
Q. And then you libeled the ship?
A. Yes.
Q. For the full amount of the wages?
A. Yes.
Q. You did not sever your connection with the ship, or refuse to work, until after the Captain refused to pay one-half of your wages?
A. No.
Q. If the Captain had complied with your demand, and paid you one-half of the wages, would you have carried out your contract, continued to work?
A. Yes.

Cross-examination.

By Judge Carter:

Q. What day did you get to Pensacola?
A. Monday night, after five, sometime.
Q. You did not go to work the next morning?
A. Yes.
Q. How long did you work?
A. Before breakfast, until about breakfast time.
Q. Did you quit off and go ashore?
A. Yes, and the Boatswain, Anderson. And see the British Consul at 11 o'clock, or half past ten.
Q. What did you want to see the British Consul about?
A. Working all the time.
Q. Was that now what you were hired for, to work all the time?
52 A. No, sir.
Q. What were you hired for, if you were not hired to work?
A. To see the Consul about Saturday morning?
Q. You went to see him to see whether you would have to work all of Saturday; was that not the idea?
A. Yes, 7 to 5.
Q. This was Tuesday morning?
A. Yes.
Q. Saturday was a long time off?
A. Yes.
Q. How came you to leave the ship?
A. Did not leave the ship.
Q. Why did you go to see the Consul on Tuesday when Saturday was so long off?
A. Had lots of trouble in working time. 6 to 5. Wanted work to be 7 to 5.
Q. And then allowed to have Saturday?
A. Yes. The fellows said, let's go to see the Consul.
Q. And tell about your wanted to work from 7 to 5 you had been working from 6 to 6?
A. Yes.
Q. How came the Union to work from 7 to 5?

A. We wanted 7 to 5. Went to see the Consul about working seven to one on Saturday?

Q. Who was it first said anything about working over time?

A. The Boatswain, and another sailor.

Q. These other sailors that brought these libels with you?

A. No.

Q. How came you to think about working from 7 to 5, or from 6 to 5. Had you been called out that morning at 6? You began work at 6 that morning?

A. Began after 6.

Q. At half past 6?

A. Yes.

Q. Then you had been working in the morning a while before going to see the Consul? What did you want to see him
53 about? Were you going to see him about having a half day Saturday?

A. Yes, wanted it all the time. We came back to the ship.

Q. Did you go to work after you came back?

A. Yes. I got hurt.

Q. Where did you hurt yourself? Where were you?

A. Tuesday morning, at 8 o'clock.

Q. You hurt yourself that morning before you went to the Consul?

A. Yes, Knocked me in the ribs, only just a little bit.

Q. Did you tell the Captain?

A. Yes.

Q. Did you see the doctor about it? The doctor said you were all right; you were not hurt?

A. Not much hurt. He said not much hurt.

Q. Did you work the next day?

A. The next day I asked for half my wages?

Q. You have not worked on the ship since? You have not worked on the ship?

A. No.

Q. Have you slept there?

A. Sometimes.

Q. Did you get anything to eat on the ship?

A. No.

Q. You say you reported to the Captain you had been hurt, and he said to see the doctor? You did not see him until late in the evening?

A. Yes.

Q. Why did you not go to see him as soon as you were hurt?

A. I told him by and by a doctor come on board.

Q. Why didn't you go to see the doctor? Why did you wait until late in the afternoon?

A. The next day.

Q. You did not see the doctor until the next day, Wednesday? What did you do all that day? You were hurt Tuesday?
54 A. I didn't see the Captain before the next day, Wednesday. The Captain not on board; went ashore.

Q. Did he stay ashore all day?

A. Not all day.

Q. Why didn't you see the Captain?

A. The Steward said it was too late.
Q. In other words; you left in the morning, and you stayed in town all day?
A. I went on board—I went on board at half past twelve, dinner time.
Q. How long did you stay on board then? You went on at half past twelve, night or day time?
A. Day time.
Q. Why did you not see the Captain that evening?
A. The Steward said, too late, come in the morning.
Q. What did you do?
A. Lay in the forecastle head.
Q. Did you work any.
A. No.
Q. Did you lay down all the time?
A. No; walked about. Wednesday morning I told the Captain. He said see the doctor when he comes on board.
Q. You had seen the Consul Tuesday morning?
A. Yes. The other fellow said see the Captain,—The Consul said bring the Articles along.
Q. You did not have the Articles with you?
A. The boatswain know about the Articles. I heard about getting paid off.
Q. You heard on Wednesday about getting half wages?
A. On Tuesday I heard that.
Q. Who told you?
A. Another fellow on board.
Q. When did you see the lawyer?
A. Thursday morning.
Q. What did you do Wednesday?
A. Wednesday I lay down on the forecastle hatch. See the doctor Wednesday.
Q. You did not work any?
55 A. Yes.
Q. You went to see the lawyer Thursday?
A. When I heard the Captain would not pay off.
Q. Had you asked him for money before that?
A. No, sir.
Q. You said you asked him for money Tuesday, and he said Saturday. When was it he told you that?
A. Another fellow.
Q. You never asked for any until Thursday?
A. No.
Q. That is the first time you asked for money?
A. Yes.
Q. The other fellow asked for money on Tuesday.
A. Yes.
Q. You did not hear that? You only know what they told you?
A. Yes.
Q. Did you ask him to pay you off, or what did you say?
A. The Captain called me Wednesday night. Get ready to see the

Consul on the next morning, to pay you fellows off. I want to get clear of you. I told the Captain, all right, I didn't mind.

Q. Why did he tell you he would pay you off?

A. I don't know.

Q. Did he give you any reason?

A. You always rowing aboard of the snip—Didn't want us any more.

Q. That was Wednesday night?

A. Yes.

Q. You said all right?

A. That was good.

Q. Who was the other fellow?

A. Cawkins, said he did not want to go. He is on board of the ship.

Q. What time was it you went to him and asked him about the wages?

A. Thursday morning, before seven o'clock.

Q. What did you say to him when you went to him?

56 A. Captain; I want to get my money, full time, and buy clothes, nothing to wear. "You don't get money before Saturday," Can't I get half what is coming to me? The Captain said, No, you can't get any money before Saturday.

Q. And then you asked for half wages?

A. Yes.

Q. I thought you said the Captain said Wednesday night he would pay you off, in cash?

A. Yes, I didn't ask to be paid off.

Q. You did not do any day's work from the 4th to the 6th?

A. Does not do a day's work.

Q. Did he tell you you did not do a day's work, and that he wouldn't pay you off?

A. Rowing around on the ship. To get ready to go to the Consul's.

Redirect examination.

By Mr. Nelson:

Q. How did you get hurt, did you say?

A. Heavy tons, eight feet, away up (making motion)

Q. How did it happen to hurt you?

A. We had to lift it two feet, and then put it—Another fellow's hand slipped, and the thing knocked me.

Q. Did you suffer any pain?

A. Yes, that time.

Q. How long did it pain you?

A. About three days I felt it.

Q. Do you feel any pain from it now?

A. No.

Q. And the end of that eight foot thing hit you in the ribs?

A. Yes.

Q. You did not libel for that?
A. No.
Q. Didn't claim any damages.
A. No, I only went to see the doctor, to see if there was anything broken.
57 Q. You only claimed the money you had earned.
A. Yes. I wanted to work on board the ship. When I saw the Captain wanted to put me ashore, to pay me off, asked for half my wages, to pay me off. I didn't want to work any more.
Q. If he had paid you, you would have kept on working?
A. The Captain said, I did not want you to go ashore. I didn't want to work no more on that ship. The Captain said you would get paid off before 12 on Thursday.
Q. The doctor you went to, who said you were not seriously hurt, was the ship's physician?
A. Yes.

Signature waived.

Capt. Robert McKenzie, Recalled—for Respondent.

Capt. Robert McKenzie, Master:

Q. Did you ever hear anything from any of the men on the ship about working by Union Rules after you got to Pensacola?
A. No, that was never mentioned.
Q. Was there any suggestion made to you about working under Union Rules? What was the ship's rule so far as working time?
A. None at all.
Q. Captain; this man John Hoikkala, you have heard him say that he came and complained about his ribs being hurt, or about receiving some hurt on the ship; was any such complaint made?
A. None, whatever.
Q. He said you paid him and two other men off?
A. Hoikkala said he wanted to go to the Hospital. I cannot mention his complaint. No complaint on board of the ship.
Q. And nothing was ever said about being hurt on the ship?
A. No, sir.
58 Q. How about his statement that you told him on Wednesday you would pay him off?
A. I would have paid him off before the boatswain left, but after I paid the boatswain off, I would not have paid them off. The boatswain is the one that works the men on board the vessel, and there was some trouble; but the boatswain (he belonged to Georgia, born in Georgia) was an American, claimed to be British, had something the matter with his eye. He asked me if I would pay him off; not his people, and he would not get along with them very well, or with I well. I paid him off, and let him go; and had no complaints after he was gone.
Q. Is the boatswain the same one that this other man said, stood in the door, with a knife, and would not let him get in the room? When did you pay him off?

A. On the 3rd of August.
Q. And he has not been there since?
A. Has not been there since.

Cross-examination.

By Mr. Nelson:

Q. You did not pay off until after they had libeled the ship, did you?
A. I paid him off on the 3rd; that was before the ship was libeled.
Q. Before you knew of the ship being libeled?
A. It was on the evening of the 3rd that the libel was put.
Q. Did you pay the boatswain in the morning? Or at night time?
A. Before twelve o'clock; from eleven to twelve.
Q. And you don't know whether the libels had been filed in the Clerk's office before that hour, or not? These men didn't know that you had paid the boatswain off at that time.
A. I suppose they would know I had paid him off.
Q. This seaman that got his rib hurt, came to you, and told you he wanted to go to the hospital, did he not?
A. No truth whatever.
59 Q. Did you not hear him say a while ago that he wanted to go to the Hospital?
A. With an old complaint I had been giving him medicine for.
Q. He did not tell you what he wanted to go to the Hospital for?
A. Oh, yes.
Q. You knew he was unwell.
A. This thing he brought on board of the ship. I cannot mention it.
Q. Did you tell him to go to the Doctor at that time?
A. I was attending to him on the voyage; after he came and let me know.

Signature waived.

Said case was submitted to the Court and after argument of Counsel for respective parties the Court on the 30th day of December, 1916, passed an order dismissing the libel of libelant, John Dillon, in words and figures following, to-wit:

In the District Court of the United States in and for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libelant,

vs.

BRITISH STEAMSHIP "STRATHEARN," Respondent; STRATHEARN STEAMSHIP COMPANY, a Corporation, Claimant.

This cause coming on for final hearing, and the Court having heard and considered the evidence and the argument of proctors for

libelant and respondent and claimant, and the Court having considered the evidence and the arguments and being advised of its opinion that the libel should be dismissed:

Now, therefore, it is ordered, adjudged and decreed, that the libel be, and the same is hereby dismissed at the cost of the libelant.

60 Done and ordered at Pensacola, this 30th day of December, A. D. 1916.

WM. B. SHEPPARD,
Judge.

Indorsement: Filed January 2, 1917. F. W. Marsh, Clerk.

* * * * * * *

In the District Court of the United States for the Northern District of Florida.

In the Matter of JOHN DILLON vs. THE "STRATHEARN."

Libel.

To Honorable Wm. B. Sheppard, Judge of the District Court of the United States for the Northern District of Florida:

The Petition of the libelant John Dillon by his proctors respectfully represents, that he is a seaman on a foreign vessel, and as such came to and was in a port of the United States and within the jurisdiction of this Court; that he desires to appeal the above stated case, and that he is unable to furnish bond or to pay the cost in said proceeding and of said appeal, owing to his poverty; that said claim in the above stated case was for wages earned in the above stated capacity.

Wherefore he prays to enter said appeal and prosecute the same in forma pauperis, and without the payment of cost or giving security therefor.

BEALL, NELSON & LAIRD,
Proctors for Libelant.

Filed June 21, 1917. F. W. Marsh, Clerk.

61 On the 29th day of June, 1917, the libelant, by his proctor...., filed an affidavit of insolvency, which is in words and figures following, to-wit:

In the District Court of the United States for the Northern District of Florida.

JOHN DILLON, Libelant,

vs.

THE STEAMSHIP "STRATHEARN," Respondent.

Libel for Seamen's Wages.

STATE OF FLORIDA,
Escambia County:

Personally came L. W. Nelson, who, on oath says that he is proctor for the libelant in the above stated case, and that of his own knowl-

edge libelant is insolvent and unable of his own account to pay the cost or give the bond required by law for the appeal of the above stated case.

L. W. NELSON,
Proctor for Libelant.

Sworn to and subscribed before me, this the 29th day of June 1917.
FRONIE HARRISON,
Notary Public.

My commission expires August 19, 1917.

Filed June 29, 1917. F. W. Marsh, Clerk.

62 *Petition for Appeal.*

On the 21st day of June, 1917, libelant filed his notice of Appeal and Assignment of Errors, which is in words and figures following, to-wit: Also Petition for Appeal.

In the District Court of the United States for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libelant,

vs.

THE BRITISH STEAMSHIP "STRATHEARN," Respondent; STRATHEARN STEAMSHIP COMPANY, Claimant.

Now comes the above named libelant, by his attorneys L. W. Nelson and Robert H. Anderson, and feeling aggrieved by the decree and opinion to which it refers, which said decree was made on the 30th day of December, A. D. 1916, dismissing the libel herein filed, and prays to be allowed an appeal from the decree in this case to the Circuit Court of Appeals for the Fifth Circuit.

L. W. NELSON &
ROBERT H. ANDERSON,
Proctors for Libelants.

The prayer of the petition is granted, and the appeal allowed on the 21st day of June, A. D. 1917.

WM. B. SHEPPARD,
United States District Judge for the Northern District of Florida.

63 *Notice of Appeal.*

In the District Court of the United States for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libelant,

vs.

THE BRITISH STEAMSHIP "STRATHEARN," Respondent; STRATHEARN STEAMSHIP COMPANY, Claimant.

Notice of Appeal.

You will please take notice, that the libelant above named, hereby appeals from the final decree made and entered hereon on the 30th day of December, A. D. 1916, in the United States Circuit — of Appeals for the Fifth Circuit in the City of New Orleans, State of Louisiana.

L. W. NELSON &
ROBERT H. ANDERSON,
Proctors for Libelant.

To Messrs. Blount & Blount & Carter, Proctors for Respondent and Claimant:

We acknowledge receipt of copy of the foregoing notice of Appeal, this the 21st day of June, A. D. 1917.

BLOUNT & BLOUNT & CARTER,
Proctors for Respondent and Claimant.

In the District Court of the United States for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libelant,

vs.

THE BRITISH STEAMSHIP "STRATHEARN," Respondent; THE STRATHEARN STEAMSHIP COMPANY, Claimant.

The libelant hereby assigns errors in the rulings in the proceedings in the District Court therein, as follows:

64 1. That the Court erred in entering final decree of December 30th, 1916, dismissing the libel.

2. That the Court erred in refusing to enter a decree in favor of libelant.

3. That the Court erred in finding that the libelant was a deserter.
4. That the Court erred in holding that the Seamen's Act of the United States, did not apply to foreign seamen, shipped on foreign vessels in foreign ports, when such seamen in an American Port, contemplated by the Articles, invokes the Court's jurisdiction.
5. The Court erred in the application of the British Law to the facts of this case.
6. The Court erred in its construction of the British Law when applying same to the facts of this case.
7. The Court erred in holding that the British Law and not the American Seamen's Act applied and governed the case.
8. Because the Court erred in holding the libelant to be a deserter under the British Law.

L. W. NELSON &
ROBERT ANDERSON,
Proctors for Libelants.

Copy of above received this the 21st day of June, A. D. 1917.
BLOUNT & BLOUNT & CARTER,
Proctors for Respondents.

Filed June 21st, 1917. F. W. Marsh, Clerk.

* * * * * * *

65 On the 22d day of June, 1917, an agreement was entered into between counsel of respective parties with reference to the case, which is in words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Fifth Judicial Circuit.

JOHN DILLON, Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Appellee.

HUGO RONLUND, Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Appellee.

JOHN HOIKKALA, Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Appellee.

It is agreed, by and between Robert H. Anderson, Proctor for Appellants, and Blount & Blount & Carter, Proctors for Appellees, in the above styled causes; that the transcripts of the records in said causes be prepared and printed separately except the testimony of the

witnesses, which was taken jointly before the commissioner in the Court below, in each case, and which said testimony counsel agrees shall be printed, and shall form a part of the record as printed, and shall be used in and considered as the testimony in each of said causes.

It is further agreed that all three of said records be printed and bound in one volume.

Pensacola, Florida, this the 22nd day of June, A. D. 1917.

ROBERT H. ANDERSON,
Proctor for Appellants.
BLOUNT & BLOUNT & CARTER,
Proctors for Appellees.

Filed June 22, 1917. F. W. Marsh, Clerk.

66 UNITED STATES OF AMERICA,
Northern District of Florida, at Pensacola:

I, F. W. Marsh, Clerk of the United States District Court, in and for the said district at Pensacola, do hereby certify that the foregoing pages numbered from one to 73, constitute a true copy and transcript of the record of the proceedings and decree in the case of John Dillon against the Steamship "Strathearn" and Strathearn Steamship Company, Limited, a corporation, Respondent, as appears from the files and records in my office.

In testimony whereof, I have hereunto set my hand and seal of said Court at Pensacola, this the 10 day of July, 1917.

[SEAL.] F. W. MARSH,
Clerk of the District Court of the United States for the Northern District of Florida.

67 And afterwards, to-wit, on the 18th day of July, A. D. 1917, the libelant filed his bond to the said respondents, which is in the words and figures following:

United States District Court, Northern District of Florida.

JOHN DILLON, Libelant,

vs.

STEAMSHIP 'STRATHEARN", Respondent; "STRATHEARN STEAMSHIP COMPANY, a Corporation, Claimant.

"Know all men by these presents, that we, John Dillon and the National Surety Company of New York, a corporation, are held and firmly bound unto the Steamship "Strathearn" and the Strathearn Steamship Company, a corporation, in the sum of two hundred and fifty dollars, ($250.00) for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and sever-ly, firmly by these presents.

Signed and sealed, this the 18th day of July, A. D. 1917.

The condition of this obligation is such that whereas the said John Dillon is prosecuting an appeal to the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit to reverse the decree rendered by the Judge of the District Court of the United States for the Northern District of Florida, in a cause wherein said John Dillon was libelant, the Steamship "Strathearn," Respondent, and the said Strathearn Steamship Company, a corporation, Claimant, dismissing the said libel. Now, if the said John Dillon shall prosecute said appeal to effect and answer all damages and costs if he fail to make said appeal good, then this obligation to be void, else to remain in full force and virtue.

JOHN DILLON,
By His Proctor, L. W. NELSON,
[SEAL.] NATIONAL SURETY COMPANY OF NEW YORK,
[SEAL.] By J. WALLACE LAMAR,
Attorney in Fact.

68 Signed before and approved by me, this the 18th day of July 1917.

[SEAL.] F. W. MARSH,
Clerk.

[Indorsed]: 3140, U. S. Circuit Court of Appeals. Filed August 23, 1917. Frank H. Mortimer, Clerk.

In the District Court of the United States for the Northern District of Florida.

UNITED STATES OF AMERICA,
Northern District of Florida:

I, F. W. Marsh, Clerk of the District Court of the United States for the Northern District of Florida, do hereby certify that the annexed is a true and correct copy of the Appeal Bond in the case of John Dillon, Libelant, vs. Steamship "Strathearn," in the sum of two hundred and fifty dollars, as the same remains on file and of record in said Court.

Witness my hand, and the seal of said Court, at the City of Pensacola, in said District, this the 17th day of July, A. D. 1917.

[SEAL.] F. W. MARSH,
Clerk.

69 *Supplemental Transcript of the Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 3140.

JOHN DILLON, Appellant,

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn," Appellee.

Appeal from the District Court of the United States for the Northern District of Florida.

[Original Supplemental Record Filed December 5th, 1917.]

U. S. Circuit Court of Appeals. Filed Dec. 10, 1917. Frank H. Mortimer, Clerk.

70 In the District Court of the United States for the Northern District of Florida.

JOHN DILLON, Libelant,

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of the Steamship "Strathearn," Respondent.

This cause coming on to be heard upon the application of the respondent for an order nunc pro tunc embodying in the record of the proceedings of this cause in this Court the facts and matters hereinafter set forth.

It is ordered that the facts and matters hereinafter set forth in numbered paragraphs one to six, inclusive, which were in evidence before this District Court upon the hearing of this cause either by stipulation or admission of the parties or by proof before the Court are and for all purposes shall be taken and held to be a part of the evidence and of the record of this Court in this cause. The said matters and things are as follows, namely:

1. The Articles of the Steamship "Strathearn" which are annexed to the answer of the claimant herein, marked "Schedule A", and printed in the record commencing at page fifteen, constitute the agreement under which the appellant served as carpenter upon the Steamship "Strathearn".

2. It appeared at the hearing in the District Court that the appellant left the service of the "Strathearn" before the vessel sailed from Pensacola, and the vessel sailed from Pensacola without him.

71 3. There was introduced and admitted in evidence upon the hearing the following statement of account identified by

the Master and testified to as being the ship's account with John Dillon:

"J. Dillon (Carpenter).

Joined 9/5/16 till 12/8/16 3 Mo. 4 Days at £11.00 per month	£34	9	4	
Advance on joining (£5.00) Order on Owner (£2.00) Dis. Fees 1/-	7	1		
	27	8	4	
Advance by Master 3/7/16 £0 7.6) Tobacco and postage (£0 9.2)		16	8	
	26	11	8	
Fines as per Off log (£1. 100) Forfeited wages (£2 14 0)	3	14		
	22	17	8	
13 weeks insurance at 3d per week		3	3	
	22	14	5	
Less Law expenses	5	4	7	2x
Exc $4.78 = $83.61 Balance	17	9	9	3x"

4. The Act of Parliament of Great Britain and Ireland, known as the Merchants' Shipping Act of 1894, was introduced and admitted in evidence at the hearing in the District Court, and the sections hereinafter set forth numbered Section 221 and Section 234 are parts of the said Act introduced in evidence and are as follows:

"Sec. 221. If a seaman lawfully engaged, or an apprentice to the sea service, commits any of the following offences he shall be liable to be punished summarily as follows:

72 *a.* If he deserts from his ship he shall be guilty of the offence of desertion and be liable to forfeit all or any part of the effects he leaves on board, and of the wages which he has earned.

* * * * * * *

Sec. 234. If a seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be an amount bearing the same proportion to the whole wages or share, as a month or any other period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage or run; and if the whole time spent in the voyage or run does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share."

5. At the hearing in the District Court there was introduced and admitted in evidence the following quotation from the second volume of the fourteenth edition of Abbott's Merchant Ships and Seamen, page 269, in proof of the law of Great Britain, namely:

"Desertion from the ship is held to be a forfeiture of the wages previously earned, in all maritime States. And in conformity to this principle of maritime law, the legislature of this country, in the reign of King William the Third, 'for the prevention of seamen deserting of merchant ships abroad in parts beyond the seas,' enacted, 'That all such seamen, officers, or sailors, who shall desert the ships or vessels wherein they are hired to serve for that voyage, shall for such offence forfeit all such wages as shall be then due to him or them." By the subsequent statute, which I have so often quoted, if a seaman shall desert, or refuse to proceed on the voyage on board any ship bound to parts beyond the seas, or shall desert from the ship to which he belongs, in parts beyond the seas, after he shall
73 have signed the contract, he shall forfeit to the owners the wages due to him at the time of his deserting or refusing to proceed on the voyage. If a mariner quit the ship with leave of the master, and when ordered to return refuses to do so, his wages are forfeited. But they are not forfeited by his quitting the ship, and refusing to proceed in her on a voyage not designated by the articles. And if in the Court of Admiralty the owners allege desertion as a defence to a suit for wages, it is incumbent on them to show the articles or contract, in order that the stipulated service may appear.'

6. There was introduced and admitted in evidence in proof of the law of Great Britain the official report in the case of Button versus Thompson in the Court of Common Pleas, reported in the English Reports in Volume 4 Common Pleas, from page 330 to page 350.

Done and ordered at Pensacola as of the 30th day of December, A. D. 1916, on the 4th day of December, A. D. 1917.

WM. B. SHEPPARD,
Judge of the District Court of the United States for the Northern District of Florida.

UNITED STATES OF AMERICA,
Northern District of Florida:

I, F. W. Marsh, Clerk of the District Court of the United States for the Northern District of Florida do hereby certify that the foregoing is a true and correct copy of a certain order made and entered in said Court on the 4th day of December, A. D. 1917, in the case of John Dillon vs. Strathearn Steamship Company, etc. as the same remains on file and of record in said Court.

Witness my hand and the seal of said Court at the City of Pensacola, in said District this 4th day of December, A. D. 1917.

[SEAL.] F. W. MARSH,
Clerk.

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Order Allowing Supplemental Transcript.

Extract from the Minutes of December 5th, 1917.

No. 3140.

JOHN DILLON
versus
STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn."

On motion of counsel for appellee,—counsel for appellant consenting thereto in open Court,—it is ordered by the Court that the supplemental record presented herewith be filed and printed.

Argument and Submission.

Extract from the Minutes of December 5th, 1917.

No. 3140.

JOHN DILLON
versus
STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn."

On this day this cause was called, and, after argument by W. J. Waguespack, Esq., and H. W. Waguespack, Esq., for appellant, and J. E. D. Yonge, Esq., for appellee, was submitted to the Court.

Statement of the Case and Questions Certified to the Supreme Court.

Filed and Entered February 4th, 1918.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3140.

JOHN DILLON, Appellant,
vs.
STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn," Appellee.

Appeal from the District Court of the United States for the Northern District of Florida.

Silas Blake Axtell, L. W. Nelson, W. J. Waguespack, and Herbert W. Waguespack, for appellant.
J. E. D. Yonge, for appellee.

Frederick R. Coudert and Howard Thayer Kingsbury, specially appearing on behalf of the British Vice-Consul at Pensacola, Florida, as amicus curiæ.

Before Walker and Batts, Circuit Judges, and Evans, District Judge.

Statement of the Case.

The appellant, John Dillon, a subject of Great Britain, shipped at Liverpool, England, on May 8, 1916, as carpenter, on the steamship "Strathearn", then and at the time of the filing of the libel in this case a vessel of British registry and enrollment, owned by the Strathearn Steamship Company, Limited, a corporation organized and existing under the laws of Great Britain. By the shipping articles signed by him the appellant agreed to serve "on a voyage from of not exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude. Commencing at Liverpool—proceeding thence to Newport News and (or) and other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the Master." On that voyage the Strathearn proceeded from Newport News to a port in South America, and from the last-named port to Pensacola, Florida, arriving there on July 31, 1916. On August 2, 1916, while the Strathearn was in the port of Pensacola, John Dillon, who was still in the employment of the ship as carpenter, demanded of the master of the ship one-half of the wages he then had earned. The master refused to comply with this demand, and no payment was made thereon. Prior to the time of that demand nothing had been paid to Dillon on his wages since the ship left a port in South America about two months before. At the time the demand was made the amount of wages earned by Dillon, less what had been paid him thereon, was approximately $125, no part of which was due under the terms of the shipping articles signed by Dillon. After the master refused to comply with Dillon's said demand the latter on the same day filed in the District Court of the United States for the Northern District of Florida a libel in admiralty against the ship in which he claimed $125, the amount of wages alleged to have been earned when said demand was made and compliance with it refused. The District Court rendered a judgment dismissing the libel. The case was brought to this court by appeal. In this court the action of the District Court in dismissing the libel was sought to be sustained on the ground that section 4 of the Act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea", (38 U. S. Statutes at Large, 1164), in so far as it provides "that this section shall apply to seamen on foreign vessels while in the harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement," is violative of the Constitution of the United States.

Whereupon, this court desiring the instruction of the Honorable the Supreme Court of the United States for the proper decision of the questions arising in this case touching the constitutionality of the above-mentioned statutory provision, it is hereby ordered that the following questions and propositions be certified to the Supreme Court of the United States of America in accordance with the provision of section 239 of the Judicial Code, to-wit:

First. Is section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea", violative of the Constitution of the United States?

Second. Is section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement?"

For information as to the facts of the case copies of the transcript and briefs are herewith transmitted.

Witness our hands this 30th day of January, 1918.

(Signed) R. W. WALKER,
Circuit Judge.
R. L. BATTS,
Circuit Judge.
BEVERLY D. EVANS,
District Judge.

(Original Filed February 4th, 1918.)

Mandate of Supreme Court of the United States.

Filed February 10th, 1919.

UNITED STATES OF AMERICA, *ss:*

[SEAL.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Fifth Circuit, in a cause between John Dillon, appellant, and Strathearn Steamship Company, Claimant of Steamship "Strathearn", appellee, No. 3140, wherein certain questions arose which were certified by the said Circuit Court of Appeals to the Supreme Court of the United States for its opinion, as by the inspection of the

55

certificate of the Judges of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and eighteen, the said cause came on to be heard before the said Supreme Court, on the said certificate, and was argued by counsel;

On consideration whereof, It is now here ordered by the Court that said certificate be, and the same is hereby, dismissed.

December 23, 1918.

You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said certificate notwithstanding.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the seventh day of February, in the year of our Lord one thousand nine hundred and nineteen.

(Signed) JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Opinion of the Court.

Filed March 24th, 1919.

In the United States Circuit Court of Appeals, Fifth Circuit.

Number 3140.

JOHN DILLON, Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn," Appellee.

Appeal from the District Court of the United States for the Northern District of Florida.

Silas Blake Axtell, L. W. Nelson, W. J. Waguespack, and H. W. Waguespack, for appellant.

J. E. D. Yonge, (W. A. Blount, A. C. Blount, F. B. Carter, and Ralph Jas. M. Bullowa, on the brief), for appellee.

Frederick R. Coudert and Howard Thayer Kingsbury, specially appearing on behalf of the British Vice-Consul at Pensacola, Fla., as amicus curiæ.

Before Walker and Batts, Circuit Judges, and Beverly D. Evans, District Judge.

WALKER, *Circuit Judge:*

This is an appeal from a decree dismissing the libel of the appellant, John Dillon, against the British steamship Strathearn to re-

cover the wages the libelant had earned as a carpenter on that ship prior to the date of his demand from the master of the ship, made two days after its arrival in the port of Pensacola, where the ship delivered cargo, of one-half part of the wages he had earned, which demand was not complied with. The action of the court was the result of its conclusion that the demand was prematurely made, having been made within less than five days after the arrival of the ship at the port where the demand was made, though no such demand had previously been made, and the appellant's service and the ship's voyage had begun several months before. The Strathearn, 239 Fed. 583. The following is the provision of the statute:

"Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void; Provided, such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full wages earned. * * * And, provided further, that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement." §4, 38 St. 1165.

The provision that "such demand shall not be made before the expiration of, nor oftener than once in five days" is not to be given the effect of requiring that five days must have elapsed after the arrival of a ship at a port where it loads or delivers cargo before a demand for half wages can be made with the effect given to it by the statute. Evidently the intention was that such a demand should not have the effect given to it by the statute if it is made within five days "after the voyage has commenced," or if made sooner than five days after the making of a previous demand contemplated by the statute. The appellant's demand was not premature.

The decree appealed from is sought to be sustained on other grounds, of which mention will be made.

It is contended that the appellant was not within the terms of the statute, because he was a British subject, who shipped on a British vessel in a British port. There is nothing to indicate that the word "seamen" in the clause, "that this section shall apply to seamen on foreign vessels while in harbors of the United States," etc., was intended to include only seamen of this country, or that that clause was intended to have the same meaning it would have had if, instead of the word "seaman", the words "American seamen" had been used. Another clause in the same sentence—"and the courts of the United States shall be open to such seamen for its enforcement"—makes it quite plain that foreign seamen are within the provision. It cannot be supposed that the last-quoted clause would have been inserted if only seamen of this country had been in contemplation. Legislation was not needed to open the courts of the United States to them.

Provisions of the act looking to the abrogation of treaties containing provisions inconsistent with it are indicative of the legislative intention to make such provisions as the one in question applicable to foreign seamen while in the ports of the United States. The circumstance that the title of the act shows that a part of its purpose was "to promote the welfare of American seamen in the merchant marine of the United States" is not indicative of an intention to make the provision in question applicable to American seamen only. It well may have been regarded that competition of American seamen in foreign ports with foreign seamen for service on foreign vessels would be hampered if in American ports only American seamen had the right given by the provision in question, so that on that ground the services of foreign seamen would be preferred by foreign vessels destined to American ports.

By the articles signed by the libelant in Great Britain he agreed to serve on a voyage not exceeding three years' duration to any port or places within designated limits, which included ports of this country, for stated wages, which, less advances made, were payable on completion of the agreed service, which had not been completed when the demand for half the wages earned was made. In behalf of the appellee it is contended that if the provision in question is so construed as to be applicable to the case at bar, it is invalid on the ground that it is one not within the legislative power of the United States to make, in that it undertakes to nullify contracts entered into between foreigners in a foreign jurisdiction in which such contracts are valid and enforceable. The enforcement of the provision in question in behalf of a foreign seaman situated as the appellant was does not have that effect. From the fact that a contract is valid and enforceable in the jurisdiction in which it was made it does not follow that it is effective to govern the relations of the parties to it while they are in another jurisdiction with the law or public policy of which it is in conflict. A contract may be valid and enforceable where it was made, and yet be unenforceable in another jurisdiction. Union Trust Co. v. Grosman, 245 Fed. 412; The Kensington, 183 U. S. 263. The fact that the seaman and the vessel are British does not prevent the American law being applicable to them while both are in an American port. Patterson v. Bark Eudora, 190 U. S. 169. The shipping contract would be given the effect of contravening a law of the United States if it were permitted to prevent the acquisition and exercise of a right given to "seamen on foreign vessels while in harbors of the United States" by a statutory provision the terms of which make it plain that the right is given notwithstanding any contract stipulation to the contrary. The statute in question is not given an extraterritorial operation by according to it the effect of preventing the existence of a contract made in another jurisdiction from depriving a seaman who is a party to such contract of a right given to him by statute while both the seaman and the ship are within the territory of the nation the law of which gives the right. The foreign contract does not prevent the relations of the parties to it being governed by the law of the place where the seaman and the ship are. The law of the place where the contract was made would be given an extraterritorial operation if it is allowed to determine the question of the

enforceability of the contract in another jurisdiction, the law of which forbids the enforcement of such a contract.

Another suggestion is that if the provision in question is held to be applicable to the facts of this case it is violative of the constitution of the United States in that it deprives a party of contract rights without due process of law. The statute does not purport to affect, and does not affect the rights of the parties under a contract made in a foreign jurisdiction, except to prevent such contract standing in the way of the enforcement of the domestic law in behalf of and against parties who have subjected themselves to the domestic jurisdiction. "It is a part of the law of civilized nations that when a merchant vessel of one country enters the ports of another, for the purpose of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement." Wildenhus's Case, 120 U. S. 1, 11. A contract made in Great Britain for the services of a British seaman on a British vessel which goes to an American port is not so far effective as to be enforceable in the latter place if its enforcement there would result in setting at naught the law of that place. As the foreign contract is incapable of giving the right claimed by virtue of it, the statute in question cannot properly be regarded as depriving a party to the contract of a right under it, the right claimed not being one which was conferred by the contract or otherwise. The obligation of a contract entered into in one jurisdiction does not extend so far as to entitle the parties to such contract to be exempt from the operation of the law of another jurisdiction to which they subject themselves, which law forbids such effect being given to the contract as is sought to be given to it in that jurisdiction. In our opinion the provision in question is not invalid on either of the grounds urged against it.

The court erred in dismissing the libel.

The decree appealed from is

Reversed.

(Original filed March 24th, 1919.)

Judgment.

Extract from the Minutes of March 24th, 1919.

No. 3140.

JOHN DILLON

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn."

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and

decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, reversed;

It is further ordered, adjudged and decreed that the appellee, Strathearn Steamship Company, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 74 to 86 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3140, wherein John Dillon is appellant, and Strathearn Steamship Company, Claimant of Steamship "Strathearn" is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 73 are identical with the printed record and supplemental record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 15th day of May, A. D. 1919.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

89 In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3140.

JOHN DILLON, Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Claimant of the Steamship "Strathearn," Appellee.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this Court in the within entitled cause heretofore certified by me for filing in the Supreme Court of the United States, was correct and complete as the same then appeared in this Court.

In pursuance of the command of the annexed writ of certiorari, I now hereby certify that on the 23rd day of June, A. D. 1919, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:—

"Circuit Court of Appeals of the United States for the Fifth Circuit.

JOHN DILLON

against

STRATHE-RN STEAMSHIP COMPANY, LTD.

It is hereby stipulated and agreed by and between counsels for the above mentioned parties that the certified transcript of record on file in the office of the Clerk of the Supreme Court of the United States in Washington, D. C., can be taken as a return to writ of certiorari granted by said Court on June 9th, 1919, in the case of
90 Strathe-rn Steamship Company, Ltd. vs. John Dillon, No. 1036 of October Term, 1918.

Dated, New York, June 23rd, 1919.

(Signed) W. J. WAGUESPACK,
Counsel for John Dillon.

(Signed) RALPH JAMES M. BULLOWA,
Counsel for Strathe-rn Steamship Company, Ltd."

I further certify that the above is a true and correct copy of said stipulation, and of the whole thereof.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 23rd day of June, A. D. 1919.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

91 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which John Dillon is appellant, and Strathearn Steamship Company, Claimant of Steamship "Strathearn", is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,

92 Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the seventeenth day of June, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

93 [Endorsed:] File No. 27,122. Supreme Court of the United States, No. 1036, October Term, 1918. Strathearm Steamship Company, Limited, vs. John Dillon. Writ of Certiorari. Filed 23d day of June 1919. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

94 [Endorsed:] 373-19/27122. No. 3140. United States Circuit Court of Appeals for the Fifth Circuit. John Dillon, Appellant, vs. Strathearn Steamship Company, Claimant of S. S. "Strathearn." Writ of Certiorari, and Return Thereto.

95 [Endorsed:] File No. 27,122. Supreme Court U. S. October Term, 1919. Term No. 373. Strathearn Steamship Company, Petitioner, vs. John Dillon. Writ of certiorari and return. Filed June 26, 1919.

No. 373

IN THE

Supreme Court of the United States

October Term, 1919.

STRATHEARN STEAMSHIP COMPANY, *Petitioner*,

vs.

JOHN DILLON, *Respondent*.

Petition and Notice of Motion to Advance Cause on Calendar

RALPH JAMES M. BULLOWA,
Attorney for Petitioner.

Ingle, Inc., 165 William Street

Supreme Court of the United States

October Term, 1919.

STRATHEARN STEAMSHIP COMPANY, *Petitioner,*

against

JOHN DILLON, *Respondent.*

Sirs.

PLEASE TAKE NOTICE, that on Monday the 6th day of October, 1919, at the opening of Court on that day or as soon thereafter as counsel can be heard, a motion will be made on the annexed petition, before the Supreme Court of the United States, that the above entitled cause be advanced and preferred for a hearing at an early date, convenient to the Court, and the Court will then and there be asked to grant the petitioner such other and further relief in the premises as may be just.

Dated, New York, September 22, 1919.

Yours, etc.,

RALPH JAMES M. BULLOWA,
Attorney for Petitioner.

To:

SILAS B. AXTELL,
and
W. J. WAUGESPACK,
Attorneys for Respondent.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for the British Embassy,
as *amicus curiae.*

Supreme Court of the United States

October Term—1919

STRATHEARN STEAMSHIP COMPANY, *Petitioner,*

against

JOHN DILLON, *Respondent.*

Now comes the petitioner, Strathearn Steamship Company, by its counsel, Ralph James M. Bullowa, and moves that the cause be advanced upon the docket of the Court, so that it may be heard at an early date.

This is an action for wages and an appeal from a decision of the U. S. Circuit Court of Appeals for the Fifth Circuit reversing a decree of the U. S. District Court for the Northern District of Florida, which dismissed a libel in admiralty by the present respondent against the petitioner.

Facts.

The libellant, a British subject, shipped at Liverpool, England, on May 8, 1916, as a carpenter on the Strathearn, a British ship, owned by the Strathearn Steamship Company, a corporation organized and existing under the laws of the Kingdom of Great Britain. The wages were nine pounds per calendar month payable at the termination of the voyage.

Under the terms of the shipping articles signed by libellant in Liverpool on the 6th day of August, 1916, he agreed to serve

> "on a voyage not exceeding three years duration to any ports or places within the limits of seventy-

five degrees North and sixty degrees South latitude, commencing at Liverpool—proceeding thence to Newport News, and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom as may be required by the master."

The Strathearn duly proceeded from Liverpool on May 9, 1916, to Newport News, thence to a port in South America and from the last named port to Pensacola, Florida, where she arrived on the afternoon of July 31, 1916, loaded with a cargo. The libellant worked throughout the following day, August 1st, but on the morning of August 2nd, while the vessel was in the port of Pensacola, left the vessel without permission and remained away all day. Before leaving the vessel, the libellant had made some complaint to the Master as to working conditions and left to see the British Consul about that difficulty, and while ashore called upon a lawyer and was advised concerning the Seaman's Act. He returned to the ship, and claiming to be still in the employ of the ship as carpenter, demanded of the Master of the ship one-half of the wages he had then earned, under the terms of said Seaman's Act. Upon being refused payment, he brought the libel herein. Under the terms of the shipping articles signed by libellant, which provided for £9 per month payable at the termination of the voyage, nothing was due him.

The provision of the Seaman's Act, pursuant to which the libellant demanded half wages, is Sec. 4530 of the Revised Statutes of the United States, as the same was amended by Sec. 4 of the Act of Congress approved March 4, 1915, as follows:

"Every seaman on a vessel of the United States shall be entitled to receive on demand from

the master of the vessel to which he belongs, one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulation in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: * * * And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States, shall be open to such seamen for its enforcement."

On December 30, 1916, the District Court held that libellant's demand was premature, and entered a decree dismissing the libel (239 Fed. Rep., 583).

The case was argued before the Circuit Court of Appeals, on December 4, 1917, and subsequently that Court certified to this Honorable Court two questions in accordance with the provisions of Section 239 of the Judicial Code, to wit:

> "Is section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled 'An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea' violative of the Constitution of the United States?

"Is section 4530 of the Revised Statutes of the United States, as the same was amended by the last mentioned act of Congress approved March 4, 1915, violative of the Constitution of the United States in so far as it provides 'That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement'?"

On March 8, 1918, the libellant petitioned this Honorable Court for a preference and the motion was granted. The case was thereupon advanced for hearing, and was argued on November 5, 1918.

On December 23, 1918, this Honorable Court decided that the certificate failed to comply with Rule 37 of this Court, and dismissed the case (248 U. S., 182).

Thereafter, and on March 24, 1919, the said Circuit Court of Appeals for the Fifth Circuit, without hearing any further argument, handed down a decision holding that the libellant's demand was not premature and that the said District Court erred in dismissing the libel, and reversed the decree of that Court, on the ground that, in the opinion of said Circuit Court of Appeals, the provisions of the Seamen's Act were applicable and were not invalid, and a decree of reversal was accordingly entered on March 24, 1919.

Petitioner applied to this Honorable Court for a Writ of Certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit, to certify and send to this Court a full and complete transcript of the record and proceedings of said Court in this case for review. Said application was granted on June 9, 1919.

The papers in this case and the complete record have been filed with the Clerk of this Honorable Court, and

the case is now on the docket of this Court for the October, 1919, Term, as case No. 373.

The Strathearn Steamship Company, petitioner, by it counsel, prays that a preference be granted to it, and that the cause be set down for hearing at some early date convenient to the Court.

Petitioner's application is based on the following grounds:

FIRST: The merchant marines of foreign governments are seriously affected by the statute in question, because the validity and effect of their contracts with foreign seamen are in doubt, and will be until the questions here raised are decided.

Whether contracts entered into by foreign shippers with foreign seamen are to be of no effect when their ships enter American ports, is a question which affects the vital interests of foreign merchant marines, for, if these contracts with seamen are nullified by this statute, the whole course of shipping agreements must be changed. The general rule of the common law, that any contract for a definite period is an entire contract and must be fully performed to entitle the employee to recover, must be abrogated to enforce this statute in this regard.

It is to put an end to this uncertainty that petitioner respectfully prays this Honorable Court to advance this case.

SECOND: Libellant is a wage earner and this is an action to recover wages, and libellant's rights are in doubt pending the decision of this Honorable Court on the issues raised on this appeal.

THIRD: The rights of many thousands of other seamen and wage earners are in doubt, and will be until the questions here raised are determined by this Honorable Court.

FOURTH: A serious question involving international relations is presented, and should be settled at an early date in order to obviate possible complications.

Upon June 9, 1919, leave was granted to counsel for the British Embassy to intervene as *amici curiae*, join in the application for certiorari; file a brief and take part in the oral argument. Petitioner is advised that counsel for the British Embassy join in the present application for preference.

WHEREFORE, it is respectfully prayed that the Court advance this case for argument.

Dated, New York, September 22, 1919.

RALPH JAMES M. BULLOWA,
Counsel for Petitioner,
Strathearn Steamship Co.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1918.

STRATHEARN STEAMSHIP COMPANY, LIMITED,
Petitioner,

against

JOHN DILLON,
Respondent.

Notice.

Notice is hereby given that the above named petitioner will, on Monday, June 2, 1919, at the opening of Court on that day, or as soon thereafter as counsel can be heard, upon its petition verified May 15, 1919, and upon a certified transcript of the record in the United States Circuit Court of Appeals for the Fifth Circuit, in the cause entitled "John Dillon vs. Steamship 'Strathearn', Strathearn Steamship Company Limited, a corporation, claimant", including all proceedings therein in said Court, submit a motion, a copy of which, and of said petition and of the brief in support thereof, are herewith served upon you, to the Supreme Court of the United States, in its

Court Room at the Capitol in the City of Washington, in the District of Columbia.

Dated, May 15, 1919.

RALPH JAMES M. BULLOWA,
Counsel for Petitioner.

The foregoing notice is hereby accepted, and service of a copy thereof, and of the motion, petition, and brief therein mentioned, is hereby acknowledged this day of May 1919.

Counsel for Respondent.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1918.

STRATHEARN STEAMSHIP COMPANY, LIMITED,
Petitioner,

against

JOHN DILLON,
Respondent.

Motion.

Now comes Strathearn Steamship Company Limited, a corporation, incorporated and existing under the laws of the Kingdom of Great Britain,

by Ralph James M. Bullowa, its counsel, and moves this Honorable Court that it shall by certiorari or other proper process, directed to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, require said Court to certify to this Court for its review and determination a certain cause in said Court lately pending entitled "John Dillon, vs. Steamship 'Strathearn', Strathearn Steamship Company Limited, a corporation, Claimant", and a full and complete transcript of the record and proceedings therein, and to that end it now tenders herewith its petition and brief and prays for leave to file the same together with a certified copy of the transcript of said record, including all proceedings in said Circuit Court of Appeals.

Dated, May 15, 1919.

RALPH JAMES M. BULLOWA,
Counsel for Petitioner,
No. 32 Broadway,
New York City.

10 **Petition for Writ of Certiorari to the Circuit Court of Appeals for the Fifth Circuit.**

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1918.

STRATHEARN STEAMSHIP COMPANY, LIMITED,
Petitioner,

11 *against*

JOHN DILLON,
Respondent.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Strathearn Steamship Company, Limited, by Ralph James M. Bullowa, its
12 counsel, respectfully shows:

1. Your petitioner is a corporation incorporated and existing under the laws of the Kingdom of Great Britain. The respondent is likewise a subject of the Kingdom of Great Britain.

2. On August 2, 1916, John Dillon the respondent, having filed a libel in admiralty in the District Court of the United States for the Northern District of Florida, against

the steamship "Strathearn" and your petitioner for the sum of $125.00, alleged to be due him for wages as a carpenter on the steamship "Strathearn". In his libel the respondent alleged that at the dates set forth in the Exhibit annexed thereto and hereto annexed the said steamship "Strathearn", whereof one R. McKenzie was Master, being at the port of Liverpool, England, the said Master by himself or his agent, did hire and ship the libellant to serve as a carpenter on board the said vessel, and that in pursuance thereof, the libellant went on board and performed his duty until he was discharged therefrom, and that at the time of his discharge, the wages earned by him were not paid, although duly demanded. And the libellant further alleged and claimed that the said vessel was at the time of said services engaged in foreign and domestic commerce upon the navigable rivers and waters of the United States, and upon the Atlantic Ocean and Gulf of Mexico, and that while said vessel was lying at the port of Pensacola, Florida, the libellant duly demanded one-half of the amount due him and that payment being refused, his contract had terminated. Your petitioner thereupon filed its answer to said libel and therein denied that the said vessel was engaged in any domestic commerce, that the libellant had been discharged and that any wages were due him. And further answering the libel, your petitioner alleged that the said Steamship "Strathearn" was at all times a vessel of British registry and enrollment; that the port of registry thereof was Glasgow, in Scotland, in the Kingdom of Great Britain; that your petitioner was a corporation of the Kingdom of Great Britain and the owner of said vessel; that

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the libellant was a subject of the Kingdom of Great Britain; that the voyage upon which the services were rendered, commenced at the port of Liverpool, England; that the libellant executed the articles of agreement by which he agreed to serve upon said vessel in the said port of Liverpool on the 8th day of May, 1916; that he thereby agreed to serve upon said steamship on a voyage of not exceeding three years' duration, commencing at Liverpool, proceeding thence to Newport News and/or any other port within the limits set forth in said articles trading in any rotation, and to end at such port in the United Kingdom as should be required by the Master; (a copy of said agreement signed by libellant was annexed to said answer, and is hereto annexed and marked Exhibit A); that the said voyage had been commenced as appears by said agreement on May 9, 1916, but had not been concluded, nor had the libellant been discharged at the time of the filing of the libel on August 2, 1916, but that prior to the filing thereof, on the 2nd day of August, 1916, the libellant had left the said vessel without permission and remained away and neglected to perform his duties and failed to return; that the libellant and your petitioner at the time of the execution of the said articles of agreement, understood that the same was to be governed by the laws of Great Britain and Ireland, and that by said laws, and more particularly the Act of Parliament of Great Britain and Ireland known as the Merchants' Shipping Act of 1894, the libellant had no just cause to leave said vessel and was not entitled to receive any wages by reason of the breach of said articles of agreement and the same became forfeited and the libellant was guilty of

the offense of desertion. And your petitioner 19
further alleged in its said answer that none of the wages of libellant were earned within the United States of America and that there was no admiralty or maritime jurisdiction in the premises and that the assumption of jurisdiction by the Court was a violation of the Constitution, treaties and laws of the United States and that the Congress of the United States had no jurisdiction and no constitutional right to make laws governing the situation.

3. On December 11, 1916, the British Vice Consul at Pensacola filed in the said United States 20
District Court his application for leave to intervene as *amicus curiae*, and as such to file a brief on behalf of the British Government in regard to the construction, application and effect of the provisions of the Act of Congress known as the Seamen's Act, invoked by the libellant in said cause, and the application was duly granted.

4. The testimony on behalf of the libellant and your petitioner having been duly taken before a commissioner on August 14, 1916, the case was duly submitted to the Court, and on December 30, 21
1916, the said District Court entered a decree dismissing the libel. It appeared from the testimony aforesaid that the said vessel "Strathearn" had duly proceeded from Liverpool on May 9, 1916, to Newport News, thence to a port in South America and from the last named port to Pensacola, Florida, where she arrived on the afternoon of July 31, 1916, loaded with a cargo; that the libellant worked throughout the following day, August 1st, but on the morning of August 2nd,

22 while the vessel was in the port of Pensacola, left the vessel without permission and remained away all day; that before leaving the vessel, the libellant had made some complaint to the Master as to working conditions and left to see the British Consul about that difficulty and while ashore called upon a lawyer and was advised concerning the Seamen's Act and returned to the ship, and claiming to be still in the employment of the ship as carpenter, demanded of the Master of the ship one-half of the wages he then had earned, under the terms of said Seamen's Act, and upon being refused payment brought the libel; that prior to
23 the time of that demand nothing had been paid to the libellant on his wages since the ship left a port in South America about two months before; that at the time of the demand, the amount of wages earned by libellant less what had been paid him thereon, was approximately $125, no part of which was due under the terms of the shipping articles signed by him, which provided for £9 per calendar month payable at the termination of the voyage. The provision of the Seamen's Act, pursuant to which the libellant demanded half wages, is §4530 of the Revised Statutes of the United
24 States, as the same was amended by §4 of the Act of Congress approved March 4, 1915, as follows:

> "Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs, one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulation in the contract to the contrary shall be void: Pro-

vided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: * * * And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement." 25 26

5. The District Judge handed down a memorandum which is reported in the 239th Federal Reporter at page 583. From his opinion it is apparent that the Judge did not consider the application and constitutionality of the Seamen's Act, but decided merely that it was not applicable because of his construction of the five-day provision therein.

6. On June 21, 1917, the libellant filed his notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and Assignment of Errors, and the same was duly allowed. The said case was argued before said Circuit Court of Appeals on December 5, 1917. The action of the District Court dismissing the libel was sought to be sustained in said Circuit Court of Appeals on the ground that §4 of the Act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American Seamen in the Merchant Marine of the United States; to abolish arrest and imprisonment as a penalty for deser- 27

tion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea", in so far as it provides "that this section shall apply to seamen on foreign vessels while in the harbors of the United States, and the Court of the United States shall be open to such seamen for its enforcement", is violative of the Constitution of the United States. Whereupon, said Circuit Court of Appeals desiring the instruction of this Honorable Court for the proper decision of the questions arising in the case touching the constitutional validity of the above-mentioned statutory provision, of its own motion on December 30, 1917, ordered that the following questions and propositions be certified to this Honorable Court in accordance with the provisions of Section 239 of the Judicial Code, to wit:

> "Is section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled 'An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea' violative of the Constitution of the United States?
>
> "Is section 4530 of the Revised Statutes of the United States, as the same was amended by the last mentioned act of Congress approved March 4, 1915, violative of the Constitution of the United States in so far as it provides 'That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement?'."

7. On March 8, 1918, the libellant petitioned 31
this Honorable Court for a preference and the motion was granted and the case was thereupon advanced for hearing, and was argued on November 5, 1918. By direction of the British Ambassador, the British Vice Consul at Pensacola, Florida, had applied for and obtained leave to intervene in the Circuit Court of Appeals as *amicus curiae* and submitted a brief in regard to the construction, application and effect of the provisions of the Seamen's Act of March 4, 1915, invoked by the libellant, and a similar application was made in this Honorable Court on behalf of the British Embassy, and by leave of this Honorable 32
Court a brief was submitted on behalf of the British Embassy upon the hearing in this Honorable Court on November 5, 1918. On December 23, 1918, this Honorable Court decided that the certificate failed to comply with Rule 37 of this Court, requiring that it contain a proper statement of the facts on which the questions of law arise, in that the certificate to the Circuit Court of Appeals contained only a partial statement of libellant's contract with the ship and did not state the terms of payment agreed upon, when or where payments were to be made under the contract, or what ad- 33
vancements, if any, were to be made during the voyage, and dismissed the case, because of the failure of the certificate to comply with the said rule. Said decision is reported in 248 U. S. 182. At the same time this Honorable Court decided other questions in regard to the construction and application of said "Seamen's Act" of March 4, 1915, as presented by the cases of Sandberg vs. McDonald, Claimant of the British ship "Talus"

reported in 248 U. S. 185, and Neilson vs. Rhine Shipping Company, Claimant of the sailing ship "Rhine", and Hardy vs. Shepard & Morse Lumber Company, Claimant of the barkentine "Windrush" reported in 248 U. S. 205, but did not determine the questions involved in this case, upon which the decisions of the lower courts have been conflicting and which have not been determined by this Court.

8. Thereafter and on March 24, 1919, the said Circuit Court of Appeals for the Fifth Circuit, without hearing any further argument, handed down a decision holding that the libellant's demand was not premature and that the said District Court for the Northern District of Florida erred in dismissing the libel, and reversed the decree of that Court, on the ground that in the opinion of said Circuit Court of Appeals the provision of the Seamen's Act in question was applicable and was not invalid, and a decree of reversal was accordingly entered on March 24, 1919, in said Court.

Your Petitioner is advised that this Court has power and jurisdiction to review said decision and judgment of said Circuit Court of Appeals by Certiorari and that this is a proper case for the exercise of such jurisdiction for the following reasons, among others:

(a) Your petitioner, as owner of a British vessel, while within the jurisdiction of the United States was subjected to the provisions of the Seamen's Act with respect to the payment of wages to the libellant, a British subject, contrary to the terms of the contract lawfully entered into between them in the Kingdom of Great Britain, and in disregard thereof.

(b) This cause involves questions of great general importance in regard to the right of British and other foreign vessels to trade with the United States without being subject to conditions with respect to their engagements with British and other alien subjects entered into without the jurisdiction of the United States, and in accordance with the law of the place where entered into, and in regard to the power of the Congress of the United States to make laws conferring rights upon foreign seamen upon foreign vessels while within the jurisdiction of the United States to violate contract obligations lawfully entered into in other jurisdictions, and in regard to the construction and application of the Act of Congress of March 4, 1915, invoked by the libellant. 37 38

(c) It is of great importance that the questions involved in this case should be adjudicated by an authoritative decision of this Honorable Court.

WHEREFORE your petitioner humbly prays that a Writ of Certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and proceedings of said court in said cause entitled "John Dillon *v.* Steamship 'Strathearn', Strathearn Steamship Company, Limited a corporation, claimant" and to the end that the said cause may be reviewed and determined by this Court and the said judgment or decree of the said Circuit Court of Appeals may be in all respects 39

reversed, and that your petitioner may have such other or further remedy or relief in the premises as to this Court may seem just and proper.

And your petitioner will ever pray.

RALPH JAMES M. BULLOWA,
Counsel for Petitioner,
No. 32 Broadway,
New York City.

STATE and COUNTY OF NEW YORK, ss.:

RALPH JAMES M. BULLOWA, being duly sworn, says that he is of counsel for the petitioner herein, and that the allegations of said petition are true as he verily believes.

RALPH JAMES M. BULLOWA.

Sworn to before me this
15th day of May, 1919.

ALEXANDER BEGG,
Notary Public #86,
New York County.

[SEAL.]

Exhibit A.

43

AGREEMENT AND ACCOUNT OF CREW.
FOREIGN-GOING SHIP.

The term "Foreign-Going Ship" means every ship employed in trading or going between some place or places in the United Kingdom and some place or places situate beyond the Coasts of the United Kingdom, the Islands of Guernsey, Sark, Jersey, Alderney, and Man, and the Continent of Europe, between the River Elbe and Brest inclusive.

Any Erasure, Interlineation or Alteration in this Agreement will be void unless made with the consent of the persons interested, and attested by some Superintendent of a Mercantile Marine Office, or Consular or Colonial Officer.

44

Name of Ship—Strathearn.
Official No.—121282.
Port of Registry—Glascow.
Port No. and Date of Register—104, 1905.
Registered Tonnage—Gross, 4419; Net, 2844.
Nominal Horse Power of Engine (if any)—352.
Registered Managing Owner of Manager:
Name—Burrell & Son.

45

Address (State No. of House, Street and Town) —54 Georges Sq. Glascow.
No. of Seamen for whom accommodation is certified—45.

The several persons whose names are hereto subscribed and whose descriptions are contained herein, and of whom nine are engaged as sailors, hereby agree to serve on board the said ship, in the several capacities expressed against their

46 respective names, on a voyage from of not exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude. Commencing at Liverpool—proceeding thence to Newport News and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the Master.

In all cases of salvage awards, notwithstanding anything herein provided the rating of Chief Officers shall be deemed to be the same as that of the Chief Engineer, the rating of the second officers that of the second engineer and the 3rd offs. that
47 of the 3rd Engs. Apprentices who have not completed two years' service shall be deemed of the rating of an O. S. and those Apprentices of over two years' service, the rating of an AB.

And the crew agree to conduct themselves in an orderly faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the Master, or of any person who shall lawfully succeed him, and of their Superior Officers, in everything relating to the said Ship and the Stores and Cargo thereof, whether on board, in boats, or
48 on shore; in consideration of which services to be duly performed, the said master hereby agrees to pay to the said Crew as wages the sums against their names respectively expressed, and to supply them with provisions according to the scale on the other side hereof.

And it is hereby agreed that any embezzlement or wilful or negligent destruction of any part of the Ship's cargo or stores shall be made good to the Owner out of the wages of the person guilty of the same.

And it is further agreed, that if any seaman enters himself in a capacity for which he is incompetent, he is liable to be disrated. 49

And it is also agreed, that the Regulations authorized by the Board of Trade, which are printed herein and numbered 166 are adopted by the parties hereto, and shall be considered as embodied in this Agreement. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the Agreement or otherwise, he shall represent the same to the Master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require; 50 and it is also stipulated that advances on account and allotments of part of the wages shall be made as specified against the names of the respective seamen in the columns provided for that purpose.

And it is also agreed, that

(a) Should any of the crew fail to join at the time specified, the Master may ship substitutes at once.

(b) Seamen and Firemen shall keep their respective forecastles clean and shall leave them so at the termination of the voyage, under a peralty of five shillings for each case of neglect. 51

(c) The Seamen and Firemen shall mutually assist each other in the general duties of the ship.

(d) The crew shall be deemed complete with 25 hands, all told, of whom not less than eight shall be sailors.

Firemen to keep galley supplied with coal. No cash shall be advanced aboard or liberty granted other than at the pleasure of the Master.

52 It is further agreed that in addition to the rates of pay herein mentioned a war risk allowance at the rate of 40/-per calendar month extra will be paid during the period of the present war to all ratings, except Officers and Engineers as arranged by arbitration and also 20/-per month only to Cooks boy—MR. Stwd. and Cabin boy.

In witness whereof the said parties have subscribed their names herein, on the days mentioned against their respective signatures.

Signed by R. McKenzie, Master.

on the 8th day of May, 1916.

53

Date of Commencement of Voyage—9/5/16.
Port at which Voyage commenced—Liverpool.

These columns to be filled up at the end of the voyage.
Date of Termination of Voyage .....
Port at which voyage terminated .....
Date of Delivery of Lists to Superintendent .....
I hereby declare to the truth of the Entries in this agreement and Account of Crew, etc. .....Master.
(Signed on succeeding page.)

Signature of Crew	Age	Nationality (If British, state birthplace)	Home Address.	
John Dillon	46	Kildare	39 St. Pauls Rd	Seacombe
Hugo Ronlund ..	29	Russia	Sailors' Home	Liverpool
54 J. Halkkala	26	Do	Do	

Particulars of Engagement.

Ship in which he last served, and year of Discharge therefrom.		Date and place of signing this agreement.	
Year	State name and Official No. or Port she belonged to.	Date	Place
1916	Knight of Thistle	8/5/16	Liverpool
Do	Nigerca	Do	Do
Do	Hermes	Do	Do

55

In what capacity Engaged	Date and hour at which he is to be on board	Amount of wages per week or calendar month	Amount of wages advanced upon or at the time of Engagement
Carpenter	6 A. M. 9/5/16.	9 . .	5 . .
Seaman	Do	6 . .	3 . .
Do	Do	6 . .	3 . .

56

57

No. 1[redacted]373

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1918.

STRATHEARN STEAMSHIP COMPANY, LIMITED,
Petitioner,

against

JOHN DILLON,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Statement.

This is an application for a Writ of Certiorari under §240 of the Judicial Code to review a decree of the United States Circuit Court of Appeals for the Fifth Circuit, reversing a decree of the United States District Court for the Northern District of Florida, dismissing a libel in admiralty by the present respondent against the petitioner.

The material facts, the questions involved, and their great general importance, are succinctly set forth in the Petition and it is unnecessary to burden the Court with a repetition of them in this brief.

BRIEF OF THE ARGUMENT.

POINT I.

The respondent's case does not fall within the provisions of the statute in question because it was not intended to apply to a foreign seaman entering into a valid contract in a foreign port for service on a foreign vessel.

POINT II.

As construed by the court below this statute would violate the constitution of the United States and would be beyond the legislative power of Congress.

POINT III.

The opinion of the Circuit Court of Appeals ignores the opinion of this Honorable Court in the "Talus," "Rhine" and "Windrush" cases and is inconsistent with them.

POINT I.

The respondent's case does not fall within the provisions of the statute in question because it was not intended to apply to a foreign seamen entering into a valid contract in a foreign port for service on a foreign vessel.

The portion of the statute here to be discussed is the last proviso of the section in question which is as follows:

> "And, provided further that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

This proviso does not in terms apply to foreign seamen. The purpose of the Act may be fulfilled without broadening its meaning to include all foreign seamen. It is "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest, and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea". The title may be looked to as an aid in the construction of an act and it indicates that Congress had in view American seamen only.

If the scope of the Act is so broadened by this proviso as to include the respondent, that is, a British seaman serving on a British vessel under a contract with another British subject made in Great Britain, it is necessary to impute to Con-

gress an intention to enact legislation having force beyond the territory of the United States; to interfere with friendly foreigners by destroying the contracts which they have made between themselves at home merely because their ships visit our ports; and to interfere with and attempt to control the relations between the subjects of a foreign friendly power aboard their own ships while they are temporarily in American waters. The language of the proviso does not require such a construction. It may readily be so construed as to avoid such results by excluding from its operation foreign seamen on foreign vessels under agreements made in foreign countries.

It was contended by the libellant below that the object of Congress was to make the seamen a "free man". "He must be within his right, if he chooses to leave the vessel in any safe place, and he must have the right to draw at least half of the wages due him in any harbor". * * * The seaman's physical needs would hold him in the vessel with a stronger grip than the threat of imprisonment" (American Seaman by Hon. John E. Raker, p. 13). In American Sea Power and The Seaman's Act by Andrew Furuseth, p. 21 quoting from the report of the Legal Aid Society "As a rule, seamen on foreign ships demand one-half their wages and then quit. The result is, the foreign ships' master must refurnish his vessel with a crew before leaving".

In simple words it is contended that the object of Congress was to encourage desertion from foreign vessels, not to promote the welfare of American seamen.

These principles are much too short sighted

even to be accepted as American principles—they savor of Bolshevism and like such principles fail to accomplish their object. Under British law the breach of a seaman's contract is desertion and the punishment for desertion is imprisonment. What avail is it for a British seaman to desert and to ship on an American vessel with higher wages and when he arrives in a British port to be imprisoned.

The argument further implies that it was the will of Congress to impose its standards not only on behalf of American Seamen but all seamen American or foreign. Fundamentally and radically the argument is at variance with the first principles of our Republic and is an attempt to violate the principles of the sovereignty of each nation and the comity of nations.

> "It is believed to be an accepted doctrine that the right of a vessel to be governed in respect of her internal discipline by the laws and regulations of her own country is not forfeited by her entrance into the port of foreign country"

(Moore International Law Digest, Vol. II, p. 335, quoting from Mr. Fish, Secretary of State).

> "And so by comity it came to be generally understood among civilized nations, that all matters of discipline and all things done on board which affected only the vessel or those belonging to her * * * should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation, or the interests of its commerce should require."
>
> Wildenhus's Case, 120 U. S. 1.

If the indirect object of the act, is to cause desertion among British seamen it has undoubtedly accomplished its object. It has been notorious that British ships have been detained in the ports of the United States because their crews have deserted just before sailing. This surely is unfriendly to an ally upon whose vessels at least half of the United States Army was transported to France.

It is wholly inconsistent to construe the effect of this Act and the previous acts of Congress to be that American seamen are subject to American law not only in our own ports but in foreign ports, and at the same time to hold that foreign seamen on foreign vessels shipped in foreign ports are subject to their own law in foreign ports but are subject to American law when at our ports.

POINT II.

As construed by the court below this statute would violate the Constitution of the United States and would be beyond the legislative power of Congress.

As construed by the court below this Act would give respondent wages to which he is not of right entitled under his contract; these same wages it would take from the ship; it would deprive the ship of respondent's services to which, under their contract, it is entitled; and it would take from the ship a right to defend an

action brought by the seaman for wages which under his contract he has not yet earned and to which he is not entitled.

It is plain that at the time and place the shipping articles of the "Strathearn" were executed, the parties to them were not amenable to this Act of Congress. It could in no way be imported into their contract, nor could their contract have been made in contemplation of it. If its provisions have attached to them and to their contract at any time, it was only at the time the "Strathearn" entered a port of the United States. Immediately before that point of time the owners of the ship and the respondent were mutually bound by the terms of their contract. The owners had the right to require the complete performance of it to the end, and had the right to defend such an action as this libel by pleading the contract. Plainly these rights are to be regarded as property, and at the moment of the arrival of the ship in an American port, the Act of Congress, as the respondent would construe it, would have the effect of taking from the owner of the "Strathearn" this property at one stroke. Such a taking of property is prohibited by the Constitution of the United States, and if this statute is given the construction contended for by respondent, it is in violation of the Constitution of the United States and void.

The argument that the effect of the statute is "merely remedial" in opening the Courts of this country to foreign seamen is contrary to the statements (cited supra) and to the statute itself. Properly, Congress has refused the forums, provided for the enforcement of its law, to the enforcement of remedies which are contrary to its public policy (such as imprisonment for desertion) and

has made it illegal to enter into a contract contrary to its law within its jurisdiction (The Eudora, 190 U. S., 169), but it is radically different to open its forums not for the enforcement of its law but for the avowed purpose of interfering with and rendering void the contracts, laws and regulations of a friendly power.

The Court below has construed the statute as giving to respondent a new right of action, in derogation of his contract. This is very different from refusing to enforce the contract affirmatively, because it may be deemed contrary to the policy of the statute.

The argument, (derived chiefly from The Kensington, 183 U. S., 263, and the cases referred to in that opinion), that the place of performance governs the interpretation of the contract and that a stipulation in the contract whereby the parties seek to avoid the public policy of the place of performance will be held void, loses sight of the fact that the cases are confined to a contract made in a foreign country to forward merchandise to the United States. The cases of *United States* vs. *Chavez,* 228 U. S., 525 and *United States* vs. *Freeman,* 239 U. S., 117, are cases where Congress undertook to control acts to be performed in the United States.

In the instant case it cannot be held that the law of the place of performance is the law of the United States for the reason that the place of performance was not the United States. The place of performance was the "Strathearn," a British ship, and although she was not immune from process while in the ports of the United States, still she did not cease to be British. While amenable to the police power of the United States and

of its several states, "her discipline and all things done on board which affected only the vessel or those belonging to her" must be dealt with according to British law. The agreement to pay the seamen's wages was not to be performed in the United States—the wages were to be paid only upon the return of the vessel to a port in the United Kingdom except as the Master might voluntarily make prior payments.

The temporary stay in a port of the United States cannot be held to take away the right of the owner to the security, which he held for the performance of the seamen's contract, by giving the seaman a right to the payment of one half of such security upon demand.

POINT III.

The opinion of the Circuit Court of Appeals ignores the opinion of this Honorable Court in the "Talus", "Rhine" and "Windrush" cases and is inconsistent with them.

In the "Talus" case (Sandberg *vs.* McDonald, 248 U. S. 185) this Court construed and applied §11 of the Seamen's Act of 1915. The "Talus" was a British ship and the libellants in that case were citizens or subjects of nations other than the United States, and as in the instant case had shipped on the vessel in the United Kingdom and without the United States, and remained in her service until they left her in a port of the United States. Prior to shipping, the libellants

in the "Talus" case had lawfully received at Liverpool, England, certain advances on account of their wages. As in the instant case, the libellants in that case, while in a port of the United States, demanded under §4 of the "Seamen's Act" one half of the wages earned by them to the date of the demand. The master complied with the demand but deducted from the payment, the advances theretofore made including those made in Liverpool. The deduction of the advances was claimed by the libellants to be in violation of §11 of the "Seamen's Act" which made it unlawful to pay seamen's wages in advance under penalty of fine and imprisonment, and provided also that the payment should not be a defense in a suit for the recovery of such wages. By the Act, it was expressly provided that the section should apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and also that no clearance should be granted any vessel unless the provisions of the section should have been complied with.

The question before this Honorable Court in the "Talus" case as stated by the Court at page 195, of its opinion, was "Did Congress intend to make invalid the contracts of foreign seamen so far as advance payments of wages is concerned, when the contract and payment was made in a foreign country where the law sanctioned such contract and payment?" And the Court held that it did not.

In the "Rhine" case (Nielson *vs.* Rhine Shipping Company 248 U. S. 205) and in the "Windrush" case (Hardy *vs.* Shepard & Morse Lumber Company, *id.*) a similar question as in the "Talus" case was presented with respect to the same section of the Act, involving the shipment

of seamen on an *American* vessel in a *foreign* port, and a similar decision was rendered.

These cases were decided at the same time that the former certificate in this case was dismissed. They are not mentioned in the opinion of the Circuit Court of Appeals, which appears to have entirely ignored them. Yet the principal ground upon which their decision was based was applicable to the case at bar, and called for a result exactly opposite to that which was reached. This Court held that it would not impute to Congress the intention to attempt to invalidate lawful foreign contracts, or *by implication* to impose conditions upon the entry of vessels into American ports. This is just what the Court below has sought to do in the present case.

The prayer of the petition should be granted and the Writ of Certiorari issued as prayed.

Respectfully submitted this 15th day of May, 1919.

RALPH JAMES M. BULLOWA,
Counsel for Petitioner,
No. 32 Broadway,
New York City.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1919.

No. 373 .

STRATHEARN STEAMSHIP COMPANY, LIMITED,
Petitioner,

vs.

JOHN DILLON,
Respondent.

Now come Frederic R. Coudert, Esq. and Howard Thayer Kingsbury, Esq., counsel for the British Embassy in the United States of America, appearing in the above entitled cause as *amici curiae* by leave of this Honorable Court duly granted on or about June 9th, 1919, and respectfully pray that the motion made on behalf of the petitioner herein to prefer this cause, returnable before this honorable Court on the 6th day of October, 1919, be granted, and respectfully represent that an early hearing and decision of this cause is of great importance to the British Government for the following reasons——

1. Because of the large number of British vessels that enter American ports and the danger that such vessels will be stripped of their crews in such ports and unduly delayed by the necessity of replacing seamen who are induced by the con-

struction placed upon the Seamen's Act of March 4th, 1915, by the Circuit Court of Appeals for the Fifth Circuit in this cause, to collect one-half of their wages and then desert their vessels.

2. Because of the apparent conflict between the decisions of this honorable Court in the cases of Sandberg *vs.* McDonald; Nielsen *vs.* Rhine Shipping Company and Hardy *vs.* Shepard & Morse Lumber Company, decided by this Court on December 23rd, 1918, (248 U. S. 185 and 205), and the decision of the Circuit Court of Appeals for the Fifth Circuit in this cause, whereby the constitutionality, construction and effect of said Seamen's Act of March 4th, 1915, in respect of the questions involved in this cause are left in confusion and uncertainty, to the great prejudice and detriment of all owners of British ships which enter American ports.

WHEREFORE, in order to put an end to such uncertainty and confusion, and that the rights and liabilities of British ship owners in respect of the questions involved in this cause may be speedily determined by an authoritative decision of this honorable Court, it is respectfully prayed that this cause be preferred upon the docket of this Court and set for hearing at some early date convenient to the Court.

Dated October 6th, 1919.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for the British Embassy
in the United States of America,
Amici Curiae,
No. 2 Rector Street,
New York City, N. Y.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1918.

No. 1086373

STRATHEARN STEAMSHIP COMPANY, Limited,
Petitioner,

vs.

JOHN DILLON,
Respondent.

Now come Frederic R. Coudert, Esq., and Howard Thayer Kingsbury, Esq., Counsel for the British Embassy in the United States of America, and move for leave to intervene in the above entitled cause as *amici curiae*, and as such *amici curiae* to file a brief, which they tender herewith, in support of the application of the above named petitioner for a writ of *certiorari*, and, in the event that such writ shall be granted, to be heard upon the argument of said cause, upon the following grounds:—

1. Upon the hearing of this cause in the District Court of the United States for the Southern

District of Florida, the British Vice-Consul at Pensacola, by direction of the British Ambassador, intervened by leave of Court as *amicus curiae* and filed a brief by the undersigned as counsel. In the Circuit Court of Appeals for the Fifth Circuit the said British Vice-Consul again intervened by leave of Court as *amicus curiae* and filed a further brief by the undersigned as Counsel. Upon the certification of this cause to this Court the undersigned, as counsel for the British Embassy, intervened as *amici curiae* by leave of this Court granted on April 1st, 1918, and filed a further brief.

2. The questions involved in this cause are of vital importance to the British Government by reason of the large number of British vessels that enter American ports, many of which are employed in the repatriation of the American troops. Upon the construction placed by the Circuit Court of Appeals upon the Act of Congress of March 4th, 1915, known as the "Seamen's Act," such vessels are in great danger of being stripped of their crews in American ports and delayed by the necessity of replacing seamen who are induced, by this opportunity, to collect one half of their wages and then desert their vessels.

3. On behalf of the British authorities it has been contended that said "Seamen's Act" does not apply to foreign seamen shipped in a foreign port on a foreign vessel under a contract, valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, and that if so construed as to be applicable to such a case, the Statute would exceed the

legislative power of Congress and would violate the Constitution of the United States.

4. In the cases of Sandberg *et al v.* McDonald, claimant of the British Ship "Talus"; Neilson *et al. v.* Rhine Shipping Co., claimant of the Sailing Ship "Rhine"; and Hardy *et al.* v. Shepard & Morse Lumber Company, claimant of the Barkentine "Windrush"; involving other provisions of said "Seamen's Act," decided by this Court on December 23d, 1918, at the same time when this Court dismissed the certificate in this cause, this Court held that there should not be imputed to Congress the intention to attempt to penalize or invalidate contracts lawfully made in a foreign jurisdiction. The Circuit Court of Appeals in this cause has construed the said "Seamen's Act" in such manner as to invalidate and render nugatory contracts lawfully made in a foreign jurisdiction, and has reached this conclusion without referring to, and apparently without taking into consideration, the said decisions of this Court. It is of great importance to the British Government that the constitutionality, construction, application and effect of said "Seamen's Act" should be determined by this Court in this respect as has been done in other respects by the decisions above mentioned.

Dated June 2nd, 1919.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for the British Embassy in the
United States of America,
Amici Curiae.
2 Rector Street, N. Y.

Supreme Court of the United States

OCTOBER TERM, [illegible]

No. 1[illegible]378

STRATHEARN STEAMSHIP COMPANY, Limited,
Petitioner,

vs.

JOHN DILLON,
Respondent.

BRIEF OF COUNSEL FOR BRITISH EMBASSY AS AMICI CURIAE.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for British Embassy,
Amici Curiae,
[illegible] Broad Street,
New York City, N. Y.

INDEX.

Authorities Cited.

Authorities Cited.

Supreme Court of the United States,

OCTOBER TERM, 1918.

No. .

STRATHEARN STEAMSHIP COMPANY, LIMITED,
Petitioner,

vs.

JOHN DILLON,
Respondent.

BRIEF OF COUNSEL FOR BRITISH EMBASSY AS AMICI CURIAE.

Statement of Facts.

This case comes before this Court upon an application by the above named petitioner for a writ of *certiorari* to the Circuit Court of Appeals for the Fifth Circuit. It has already been before this Court upon certification, by such Circuit Court of Appeals, of two questions of law relating to the constitutionality of the "Seamen's Act" of March 4th, 1915. The Certificate was dismissed

by this Court because it failed to contain "a proper statement of the facts on which the questions of law arise", as required by Rule 37 (See Dillon *vs.* Strathearn S.S. Co., 248 U. S. 182).

It is to be observed that the former certification of this case to this Court was made by the Circuit Court of Appeals of its own motion and without affording to counsel any opportunity to be heard in regard to the form of the Certificate or of the Record. After the dismissal of the Certificate by this Court the Circuit Court of Appeals proceeded to a decision of the cause without hearing any further argument and apparently without taking into consideration the decisions of this Court in the cases of Sandberg *vs.* McDonald, 248 U. S. 185, and Neilson *vs.* Rhine Shipping Co., and Hardy *vs.* Shepard & Morse Lumber Co., reported together in 248 U. S. 205, which were argued before this Court at the same time as this cause, and decided by it on the same date on which it dismissed the Certificate.

Notice has been given by the Strathearn Steamship Co. Ltd., the claimant in the District Court and the appellee in the Circuit Court of Appeals, of the presentation to this Court on June 2nd, 1919, of a petition for *certiorari* and it is in support of such application that leave is sought to submit this brief.

The facts involved and the proceedings heretofore had are fully set forth in the petition for *certiorari* and it is deemed unnecessary to repeat them at length in this brief. The importance to the British Government of an authoritative decision by this Court upon the constitutionality, construction and effect of the provision of the "Seamen's Act" involved in this cause is ob-

vious. It will be shown in this brief that the decision of the Circuit Court of Appeals in this cause is at variance with the principles upon which the decisions of this Court in the other cases above cited, arising out of other provisions of the "Seamen's Act", are based.

The provision here in question is contained in §4530 of the United States Revised Statutes, as amended by the "Seamen's Act". This section requires payment on demand of one-half part of a seaman's wages at any port where the vessel, during the voyage, shall load or deliver cargo. It further provides that any failure on the part of the Master to comply with the demand shall release the seaman from his contract and entitle him to full payment of the wages earned, and further

> "that this Section shall apply to seamen on "foreign vessels while in harbors of the "United States, and the Courts of the United "States shall be open to such seamen for its "enforcement".

In the case at bar the District Court held that the rights of the parties were to be determined by the foreign law to which they were subject, that the libellant's demand was premature and that the case did not come within the purview of the "Seamen's Act". In the Circuit Court of Appeals the libellant-appellant contended that this construction was incorrect; that libellant's demand was not premature and that the American statute, not the law of the flag, applied and governed the case. The claimant-appellee, and the British authorities, replied that the statute, if so construed, would be unconstitutional. The Circuit Court of Appeals held that the demand was not premature;

that the statute applied; that the original shipping contract became unenforceable when the vessel came within American jurisdiction and thereupon ceased to govern the relations between the parties; and that the statute, as so construed, did not violate the Constitution of the United States or exceed the legislative power of Congress. It is this decision of which a review is now sought.

Brief of the Argument.

1. The decision of the Circuit Court of Appeals is at variance with the principles enunciated by this Court in the other cases arising out of the "Seamen's Act".

2. The statute should not be so construed as to invalidate contracts lawfully made between foreigners in a foreign jurisdiction.

3. As construed by the Circuit Court of Appeals the statute exceeds the legislative power of Congress and violates the Constitution of the United States.

POINT I.

The decision of the Circuit Court of Appeals is at variance with the principles enunciated by this Court in the other cases arising out of the "Seamen's Act".

These cases have already been cited (*supra* page 2). In the *Talus* case (Sandberg *vs.* McDonald) the question arose in regard to ad-

vances made upon a British ship at Liverpool, England, to seamen who were citizens or subjects of nations other than the United States. This the Court described as "a practice usual and customary and not forbidden by the laws of Great Britain". In making payment of wages to certain of these seamen at an American port the Master deducted the amount of the advances. The seamen thereupon brought suit and invoked the provisions of §11 of the Seamen's Act, which forbids, under penalty of fine and imprisonment, the payment of any advance wages; provides "that this Section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States;" and forbids the clearance of any vessel not complying the provisions of the Section.

This Court held that Congress did not intend to invalidate the contracts of foreign seamen lawfully made in a foreign country, or to annul such contracts as a condition upon which foreign vessels might enter American ports, and limited the application of the statute to advance payments made in the United States.

In the *Rhine* and *Windrush* cases (Neilson *vs.* Rhine Shipping Company), the same rule was applied to a case in which advance payments had been made by the Master of an American vessel in a foreign port. It was pointed out that although American vessels might be controlled by Congressional legislation as to contracts made in foreign ports, Congress did not intend to place American shipping at the disadvantage of an inability to obtain seamen in foreign ports, when compared with the vessels of other nations which are manned by complying with local usage. In these cases this

Court made it clear that it would not impute to Congress an intention to ignore the inherent territorial limitations upon legislation, as it would do by attempting to invalidate foreign contracts, lawful where made.

The decision of the Circuit Court of Appeals in this case is wholly at variance with these principles. That Court held that the clause "seamen on foreign vessels while in harbors of the United States" was intended to include all seamen of whatever nationality and wherever shipped. It based this decision upon the ground that the clause "the Courts of the United States shall be open to such seamen for its enforcement" would not have been inserted if only American seamen had been contemplated, since "legislation was not needed to open the Courts of the United States to them". The title of the Act was disregarded because it was considered that the clause in question might have been intended to encourage "competition of American seamen in foreign ports with foreign seamen for service on foreign vessels". The Court further held that the enforcement of the provision in question in the case at bar did not have the effect of nullifying a contract validly entered into between foreigners in a foreign jurisdiction, but merely rendered the contract unenforceable in this country because in conflict with its public policy.

This decision ignores the fundamental distinction between taking away a remedy for the enforcement of a foreign contract, valid where made, but at variance with the local law and public policy of this country, and creating an independent and enforceable pecuniary liability in direct contravention of a valid foreign contract. As pointed

out by this Court in the *Talus* case, Congress cannot prevent the making of contracts in other jurisdictions, and foreign countries may and will continue to permit such contracts as they see fit without regard to the declared law or policy of this country. This Court conceded for the purpose of the argument "that Congress might have legis-"lated to annul such contracts as a condition upon "which foreign vessels might enter the ports of "the United States" but pointed out that no such provision was "specifically made in the statute" and that so important a regulation was not to be "gathered from implication".

Since advance payments, which are specifically forbidden and even made criminal in this country, may nevertheless be lawfully contracted for and made in a foreign jurisdiction, in like manner contracts concluded in a foreign jurisdiction, may lawfully be made dependent upon the completion of the agreed service.

The decision of the Circuit Court of Appeals appears to have been based upon three decisions of this Court, none of which is applicable. They are as follows:—

(a) Union Trust Co. *vs.* Grosman, 245 U. S. 412.

In that case it was held that the District Court of the United States, sitting in Texas, properly refused to enforce a contract made in Illinois by a married woman domiciled in Texas and under the law of Texas incompetent to contract as a *feme sole*. This decision merely refused affirmative enforcement of a contract invalid by the law of the forum and the law of the defendant's domicile. It did not undertake to enforce an independent

liability, contrary to the provisions of a contract lawful under both the *lex loci contractus* and the *lex domicilii of the parties.*

(b) Patterson *vs.* Bark *Eudora,* 190 U. S. 169.

This decision held that the former statute against advance payments to seamen was applicable to advance payments *made in an American port,* although on a foreign vessel. The limitations upon this decision were fully discussed by this Court in the *Talus* case, *supra,* and this Court at the same time approved the converse of the doctrine as laid down in *The State of Maine,* 22 Fed. Rep. 734, and applied it in the *Rhine* and *Windrush* cases (see p. 2, *ante*).

(c) *The Kensington,* 183 U. S. 263.

In this case this Court held that where a contract was made in a foreign country to be performed in part in the United States by the transportation of goods thereto, the carrier could not relieve itself from the consequence of its own negligence by a stipulation to that effect, contrary to the public policy of the United States as declared in the "Harter Act", although such a stipulation was permitted by the law of Belgium, where the ticket constituting the contract was finally countersigned. There, by the express terms of the contract, final performance was to take place in the United States; in the case at bar the contract was to be performed entirely upon a British vessel, which might or might not enter any port of the United States at all.

In the case at bar the Circuit Court of Appeals further held that:

> "The foreign contract does not prevent the "relations of the parties to it being gov- "erned by the law of the place where the sea- "men and the ship are."

If this is the law, then the contract of a seaman, as expressed in his Shipping Articles, would be governed by a different law at every foreign port where the vessel might touch, and would become so kaleidoscopic and chameleon-like as to leave the legal relations of the parties in hopeless confusion.

The Circuit Court of Appeals also referred to Wildenhus' Case, 120 U. S. 1. There, however, this Court merely held that the local Courts of this country had jurisdiction over a *crime* committed on board a foreign vessel in an American port, disturbing the public order of the port, and hence within the express exception of the Treaty with Belgium, which gave consular jurisdiction over the "internal discipline of Belgian vessels in matters not affecting public order". Upon this wholly inapplicable decision, the Circuit Court of Appeals held that the construction which it placed upon the statute in question did not operate to deprive the ship owner of contract rights without due process of law.

POINT II.

The statute should not be so construed as to invalidate contracts lawfully made between foreigners in a foreign jurisdiction.

Since the construction placed upon the statute in question by the Circuit Court of Appeals is inconsistent with the principles laid down by this Court in the other "Seamen's Act" cases, it remains to consider how that statute should be construed.

The statute does not apply in terms to *foreign* seamen, shipped in a *foreign* port on a *foreign* vessel, which thereafter comes into a harbor of the United States to load or deliver cargo. The provision under consideration reads:—

> "This section shall apply to seamen on "foreign vessels while in harbors of the "United States."

It is not expressly made applicable in this respect to *foreign* seamen and the purpose of the Act can be fulfilled without thus straining its language.

The title of the Act is:

> "An Act to promote the welfare of *Ameri-* "*can* seamen in the merchant marine of the "United States; to abolish arrest and im- "prisonment as a penalty for desertion and "to secure the abrogation of treaty provi- "sions in relation thereto; and to promote "safety at sea."

It is not an Act to promote the welfare of *foreign* seamen, or of seamen generally, but of

American seamen, and it should not be extended by construction so as to apply to foreign seamen in cases where such application would conflict with their existing contractual or statutory duties and obligations.

It is true that the title of an Act may not "be used to add to or take from the body of the statute," but it may and should "be considered in determining the intent of the legislature."

> See Holy Trinity Church *vs.* United States, 143 U. S. 457, at p. 462.

See also United States *vs.* Palmer, 3 Wheat. 610, in which Chief Justice Marshall said, at p. 631:

> "The words of the section are in terms of "unlimited extent. The words 'any person "or persons' are broad enough to compre- "hend every human being. But general "words must not only be limited to cases "within the jurisdiction of the state, but also "to those objects to which the legislature in- "tended to apply them. * * * The title "of an Act cannot control its words, but may "furnish some aid in showing what was in "the mind of the legislature. The title of "this Act is 'An Act for the punishment of "certain crimes against the United States'. "It would seem that offences against the "United States, not offences against the hu- "man race, were the crimes which the legis- "lature intended by this law to punish."

So, in the statute under consideration, although the words "seamen on foreign vessels while in harbors of the United States" may be grammatically broad enough to include *all* seamen, foreign as well as American, yet the title of the Act clearly indicates that Congress had in mind American,

not foreign, seamen, as the objects of its solicitude, and it is not to be supposed that Congress was unaware that its action must necessarily be "limited to cases within the jurisdiction" of the United States.

Upon these principles the present Act should be construed as applicable only to seamen shipped in an American port on vessels which remain for a time in or afterwards return to an American port to load or deliver cargo.

There is another construction which was suggested in Clyma *vs.* Steamship *Ixion,* 237 Fed. Rep. 142, in a decision rendered on exceptions to the libel. There the Court held that since the libel showed

> "that wages were *earned while in the port "of Seattle,* demand made within the provi- "sions of Section 4530 *supra* as amended, "and payment refused, a cause of action is "stated,"

and the exceptions to the libel were accordingly overruled. The libel has since been dismissed, in an opinion not yet reported on the ground that the issue was disposed of by the decision of this Court in the *Talus* case.

The ruling, made upon the exceptions and afterwards apparently abandoned, much decided that the Act might be applicable to wages actually earned by a foreign seaman on a foreign vessel while in an American port. The construction of the statute thus indicated would at least limit its operation to wages actually earned within the territorial jurisdiction of the United States, although under a foreign flag, and would thus be less disruptive of foreign commerce than the construction adopted by the Circuit Court of Appeals in the case at bar.

Another construction which might be deemed open to consideration would be to make the statute applicable to seamen of American nationality upon foreign or domestic vessels, irrespective of the port of shipment. Seamen are regarded, to a certain extent, as "wards of the Admiralty" the world over, subject to certain disabilities and entitled to special protection. It might be contended that each nation may regulate these disabilities at its own will, and that such disabilities inhere in the personal capacity of each individual and go with him wherever he may be, as a part of his "*statut personnel*", as for certain purposes do the disabilities of infancy and coverture and certain disabilities affecting the validity of marriages. This construction would be to some extent in line with the decision of this Court in Union Trust Company *vs.* Grosman, *supra* (p. 7).

Upon this theory a ship master, engaging an American seaman in a foreign port, would take him with constructive notice of potential disabilities which might become legally operative if he should thereafter be brought within the territorial jurisdiction of his own country. Although this construction would have some logical relation with the general body of international private law, it would be at variance with the well established rule, followed by the District Court in the case at bar, that a seaman, shipping under a foreign flag, is governed by the law of that flag.

See *The Magna Charta*, Fed. Cas. #8953, 2 Lowell, 136.

The Egyptian Monarch, 36 Fed. Rep. 773.

Wilson vs. *The John Ritson*, 35 Fed. Rep. 662.

The Belvidere, 90 Fed. Rep. 106.

The Ucayali, 164 Fed. Rep. 897.

Rainey *vs.* N. Y. & P. S. S. Co., 216 Fed. Rep. 454.
The Elswick Tower, 241 Fed. Rep. 706.

The facts in the case at bar do not present this particular situation.

POINT III.

As construed by the Circuit Court of Appeals, the statute exceeds the legislative power of Congress and violates the Constitution of the United States.

The statute cannot be made applicable in such a way as to nullify valid contracts lawfully made between foreigners in a foreign jurisdiction without transcending the legislative powers and jurisdiction of the United States. It is elementary that

> "the laws of no nation can justly extend be-
> "yond its own territories except so far as
> "regards its own citizens."

See *The Apollon,* 9 Wheat. 362, at p. 370, per Story, J.
Also Moore's International Law Digest, Vol. 2, §197, p. 213.

This is a general rule of international law based upon fundamental principles of jurisprudence, and is not confined to nations having a legislature created and circumscribed by a written constitution.

In the case at bar the libellant made in England a valid contract to serve for a voyage "not exceeding three years' duration, * * * and to end at such port in the United Kingdom as may be required by the Master." By the express statutes and the general law of the place where the contract was made, and of the nationality to which the vessel and the libellant belonged, this contract bound the libellant to serve out the entire period of employment under penalty of forfeiture of his wages. The British statute on the subject (Merchant Shipping Act of 1894) is quoted in the claimant's answer and is in its essential portions as follows:

> §221. If a seaman lawfully engaged * * * deserts from his ship he shall be guilty of the offence of desertion and is liable to forfeit all * * * of the wages which he has earned." (Rec., p. 13).

This British statute is declaratory of the general maritime law of nations, as shown by many authorities, among which special reference may be made to the following:

> Abbott on Merchant Ships & Seamen, 14th Ed., p. 209.
> *The Bulmer,* 1 Hag. Adm. 163.
> Button *v.* Thompson, L. R., 4 C. P. 330.
> The Baltic Merchants, 1 Edw. Adm. 86.

It has heretofore been recognized in this country that where a seaman has contracted to serve during a certain voyage he must, in order to recover wages, allege and prove that he had fully performed his contract, or that he had been pre-

vented from doing so by some circumstance amounting to a legal excuse.

See Wilcox *v.* Palmer, 29 Fed. Cas. #17638.
The Leiderhorn, 99 Fed. Rep. 1001.

This is in accord with the general rule of the common law that any contract of employment for a definite period is an *entire* contract and must be fully performed to entitle the employee to recover.

See Spain *vs.* Arnott, 2 Stark. 256;
Lantry *vs.* Parks, 8 Cow. 63;
Faxon *vs.* Mansfield, 2 Mass. 147.

The provisions of the Act under consideration are in derogation of these general rules of the common law as long understood and applied in this country as well as in England and are based upon the theory that seamen are a special class requiring peculiar protection and therefore to be deprived within certain limits of the power of free contract. The Act should accordingly be strictly construed and not extended by construction to matters or persons not within the legislative jurisdiction of the United States.

In the "Seamen's Act", Congress does not undertake to require compliance with the provision in question, in the case of foreign seamen on foreign vessels, as a condition of the entry of such foreign vessels into American ports or their clearance therefrom, so that it is not necessary to consider what would be the effect of so extraordinary a departure from the usual course of international comity.

The construction contended for by the British

authorities, namely, that the Act does not apply to wages earned by a foreign seaman shipped in a foreign port on a foreign vessel under an express contract for payment only upon completion of the entire voyage, is not in any way inconsistent with the language of the Act and is in accord with its purpose as expressed in its title, and with the general current of authority.

Upon the construction placed upon the Act by the Circuit Court of Appeals it is in conflict with the Constitution of the United States. By constraining the owners of the *Strathearn* to the payment of moneys contrary to the provisions of an express contract valid where made and of the statutes in force at that time and place, it deprives them of property without due process of law.

If the Act of Congress in question were the Act of a State Legislature it would manifestly be unconstitutional as one "impairing the obligation of contracts" under U. S. Const., Art. 1, §10. This Constitutional prohibition applies specifically to legislation by the States of the Union and is not in terms applicable to the United States. This Court has held, however, in The Sinking Fund Cases, 99 U. S. 700, at p. 718, that although the United States

> "are not included within the constitutional "prohibition which prevents States from "passing laws impairing the obligation of "contracts, but equally with the States they "are prohibited from depriving persons or "corporations of property without due proc- "ess of law."

It may be that it is within the power of Congress to pass laws impairing the obligation of contracts

to the extent of taking away some of the remedies formerly available for their enforcement. In the present legislation this has been done to a certain degree by abolishing the arrest of seamen for desertion and providing for the abrogation of Treaty stipulations for the use of this remedy by foreign ship-masters. It is also possible that this legislation would be effectual to prevent a suit for damages for breach of contract against a seaman who leaves a foreign ship in an American port after a demand for half wages and refusal of payment.

Upon the construction of this statute adopted by the Circuit Court of Appeals, Congress has not merely *taken away a remedy,* but has attempted to *create an enforceable pecuniary liability* in direct contravention of a contract lawful and valid where made, and to release *one* of the parties from his contract. This violates the constitutional prohibition against the deprivation of "property without due process of law" (U. S. Const., Amendment V). *As well might Congress undertake to impose a fine upon a foreign vessel for an act done wholly within a foreign jurisdiction and there recognized as lawful.*

This principle has been very recently expressed by this Court in United States *v.* Freeman, 239 U. S. 117. This was a prosecution for violation of §240 of the Criminal Code, forbidding the shipment from any foreign country into any State of intoxicating liquors not properly labelled. The Court held that shipment meant transportation from one locality into another and was

> "essentially a continuing act whose perform-
> "ance is begun when the package is delivered
> "to the carrier and is completed when it
> "reaches its destination;"

and that

> "all will concede that Congress did not intend "to do anything so obviously futile as to de- "nounce as criminal an act wholly done in a "foreign country, such as the delivery to the "carrier where the shipment is from a for- "eign country into a State."

In like manner it would be "obviously futile" for Congress to attempt to declare illegal a civil contract, validly made outside of the jurisdiction of the United States by persons owing no allegiance to the United States.

In the case at bar, the contract of employment for an entire voyage, being valid where made, and being beyond the power of Congress to abrogate or affect, is a complete defense to this suit. In addition, there has been a forfeiture by desertion, which not only bars this suit, but any suit based upon the original employment.

A "vested right to an existing defence" is property, and hence within the constitutional protection.

> See Pritchard *vs.* Norton, 106 U. S. 124, at p. 132.

Legislation which attempts to take away a vested right under a contract not only impairs the obligation of the contract but is also equivalent to a deprivation of property.

> See Houston & Texas Central Railway *vs.* Texas, 170 U. S. 243, 261;
> Angle *vs.* Chicago, St. Paul &c. R. Co., 151 U. S. 1, 19.

The consequences of adopting the construction of the statute placed upon it by the Circuit Court

of Appeals would be disastrous. A seaman who is able to collect half his wages under threat of terminating his contract, and collecting all by legal process if his demand for half is not complied with, may be tempted, by various easily imaginable considerations, to take half his pay, and then desert his ship and let the other half go, whereas, if confronted with the forfeiture of his wages in full, he would doubtless complete his term of employment.

It was admitted by counsel for the present respondent in his brief in the Circuit Court of Appeals that the construction of the Act which he advocated causes "hundreds of seamen" to demand and get half their pay, and "then desert their ships, taking with them what effects they can."

The Courts of this country should protect the merchant vessels of a friendly foreign government against being thus stripped of their crews in American ports and delayed indefinitely while new crews are sought. The express purpose of the Act is to promote the welfare of *American* seamen. Other nations should be allowed to promote the welfare of their own seamen and shipping in such manner as they see fit, so long as their methods do not interfere with the peace and order of American ports. Moreover, under the proper and constitutional construction of the statute here advocated, the peace and order of American ports will not be endangered by the presence of large numbers of deserting seamen, not liable to arrest for such desertion, and difficult to deal with effectually under the American Immigration Laws.

The Act should be given a construction in accordance with the spirit of the United States

Constitution and of general international law, and within the proper sphere and jurisdiction of Congress.

It is elementary that where a statute may be so construed as not to contravene the Constitution, such construction should be adopted, thus avoiding the necessity of directly determining the constitutional question.

See The Japanese Immigrant Case, 189 U. S. 86, 101;
St. Louis Southwestern Ry. Co. *vs.* State of Arkansas, 235 U. S. 350, 369;
Billings *vs.* United States, 232 U. S. 261, 279;
Towne *vs.* Eisner, 245 U. S. 418, 425.

This Court is therefore asked to declare that the right conferred by the "Seamen's Act" to demand half wages and terminate the contract on refusal cannot be invoked by a foreign seaman shipped on a foreign vessel in a foreign port, in such a manner as to nullify the seaman's contractual obligations and statutory duties and to cripple the merchant marine of a friendly Government upon which this country is largely dependent for the repatriation of its own troops.

CONCLUSION.

The writ of certiorari should be granted as prayed, to the end that the decision of the Circuit Court of Appeals may be reviewed and reversed by this Court.

Respectfully submitted this 2nd day of June, 1919.

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

STRATHEARN STEAMSHIP COMPANY (Limited), petitioner. *v.* JOHN DILLON. } No. 373.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MOTION OF THE UNITED STATES FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND TO BE ORALLY HEARD.

Comes now the Solicitor General on behalf of the United States of America and respectfully requests that it be permitted as *amicus curiæ* to file a brief in the above-entitled cause and to be orally heard by counsel in its behalf.

The United States is interested in maintaining the applicability of section 4 of the "Seamen's Act" of March 4, 1915, to foreign seamen shipping at foreign ports and entering the United States on foreign vessels and to all contracts made with such seamen. The question presented is of vital interest to the United States in its efforts to build up an efficient merchant marine.

147263—19

Counsel for the British Embassy have been granted leave to file a brief herein and to participate in the oral argument. Their brief on file is in opposition to the above view.

The case has been advanced for argument on December 8 next.

Counsel representing the parties to this cause concur herein.

ALEX. C. KING,
Solicitor General.

NOVEMBER, 1919.

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CONTENTS.

151438—19——1

CASES CITED.

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STRATHEARN STEAMSHIP COMPANY, LIMITED, v. JOHN DILLON. } No. 373.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE.

STATEMENT OF THE CASE.

This case involves the construction and validity of section 4 of the Seamen's Act of March 4, 1915, 38 Stat. 1164, Comp. Stat. (1916), Sec. 8322. It was before this court at the last term, upon a certificate of said Circuit Court of Appeals, and was remanded without opinion because of insufficiency of the certificate. 228 U. S. 182. The main question is whether said section 4 applies to foreign seamen on foreign vessels and whether the conditions contained in said section so construed are valid. This brief is filed by the United States as *amicus curiae* in accordance with leave obtained, because of the public interest in the questions involved.

THE STATUTE.

Section 4 of the Seamen's Act provides as follows:

That section forty-five hundred and thirty of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

SEC. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty nine of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.

THE FACTS.

John Dillon, a British subject, shipped at Liverpool on May 8, 1916, on the British ship *Strathearn*. The shipping articles, signed at Liverpool, provided for a voyage of not exceeding three years' duration, commencing at Liverpool and proceeding thence to Newport News or other ports, and trading in any rotation, and to end at a port in the United Kingdom. The only provision of said articles relating to the time or place of payment of wages was to the effect that "no cash shall be advanced aboard or liberty granted other than at the pleasure of the master." (Rec. 13.)

The agreement was valid according to the laws of Great Britain.

On arrival of the ship in Florida, after demand and refusal, this libel was filed for one-half of the wages earned. The District Court dismissed the libel. (239 Fed. 583.) Upon the dismissal of the certificate by this court, the case was heard by the Circuit Court of Appeals and the decision of the District Court reversed, the Circuit Court of Appeals holding that section 4 of the Seamen's Act was constitutional and that the seaman was entitled to maintain the libel. (Rec. 55–59.)

ARGUMENT.

FIRST PART—CONSTRUCTION OF THE ACT.

I.

The purpose sought to be accomplished was to equalize on foreign vessels the burdens placed by American law, in its care for American seamen, upon the American merchant marine, by making such foreign vessels seeking American ports subject to regulations affecting American vessels.

At the time of the passage of the Seamen's Act, rehabilitation of the national merchant marine had long been a public demand. In his annual message to Congress of December 7, 1903, the President urged the appointment of a commission to investigate and report "what legislation is desirable or necessary for the development of the American merchant marine and American commerce, and incidentally of a national ocean mail service of adequate auxiliary naval cruisers and naval reserves." The Merchant Marine Commission was created by Act of April 28, 1904 (33 Stat. 561), which held elaborate investigations and reported to Congress January 4, 1905. (39 Cong. Rec., part 1, pp. 437–439; S. Rep. No. 2755, 58th Cong., 3d sess.)

In the early period of the Nation's life the American marine occupied a proud position. In 1821 and 1826 the percentage of imports and exports carried in American vessels was 88.7 per cent and 92.3 per cent, respectively. In 1870 it had declined to 35.6 per cent,

and in 1913–14 it was 10.1 per cent and 9.7 per cent, respectively. (Annual Report Commissioner of Navigation, 1915, p. 159.) As stated in the report of the American Merchant Marine Commission, "The condition of the remnant of the ocean fleet of the United States is therefore absolutely desperate * * *. Our war fleets in the Mediterranean and South American waters scarcely see a United States merchant flag from one year to another." (Report, *supra*, pp. vi, vii.) We had long ceased to be a seafaring people.

The dangers incident were pointed out. Lack of a merchant marine means the want of the naval reserve and transport service indispensable in time of war. The Merchant Marine Commission estimated, moreover, that $150,000,000 was paid annually to foreign shipping for freight, mail, and passenger service (p. 5). Also, the lack "of marine delivery wagons" to South America was held to be a prime cause of our inadequate commerce with South America (p. 6).

The decline of the merchant marine was laid to many causes. It was everywhere recognized that the American maritime industry suffered from (1) a higher cost of construction of ships, and (2) a higher cost of operation, due primarily to higher wage standards. The projects to overcome both handicaps have been many. Admiralty subventions have been proposed, as well as navigation bounties and construction bounties. A mail subsidy project had been pro-

vided by act of March 3, 1891, ch. 519, 26 Stat. 830. The Merchant Marine Commission reported in 1905 in favor of subventions. The minority proposed the imposition of discriminating duties. The former project failed on account of public sentiment against subsidies. The latter was attempted in 1913 by the Sixty-third Congress, but on account of prejudice against the disruption of treaty relations likewise came to naught. (Sec. IV J, subsec. 7 of the act of Oct. 3, 1913, ch. 16, 38 Stat. 114, 196; see *Five Per Cent Discount cases*, 243 U. S. 97.)

An attempt to remove the handicap of higher cost of labor was made by act of June 26, 1884, c. 121, 23 Stat. 53, entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes." Section 20 provided that American vessels could engage seamen in foreign ports to serve for round trips without being required to reship them in ports of the United States. The effort was to reduce the standard of American seamen's wages to that of the foreign competitors. It failed of the desired results. In the act of March 4, 1915, one purpose was to remove this handicap, but by the opposite method of seeking to raise standards to the American level.

II.

The legislative purpose was by limiting the enforcement of all wage contracts, wherever made, by all vessels while in our ports, to equalize the relations between domestic vessels and foreign vessels visiting our ports as to their seamen.

(A) *Meaning of the act.*

Said section in terms applies to "every seaman" on a vessel of the United States. "Every seaman" clearly does not mean "American-born seaman," but seamen of every nationality on an American ship. Had Congress intended to limit the section to American seamen, it would not have used the broad term "every seaman."

But even if the section were to be restricted to American seamen, it is clear that foreign seamen employed on American ships are "American seamen." *The Laura M. Lunt* (D. C., E. D. La.), 170 Fed. 204. Hence the seamen covered by every part of the act are not limited to American citizens or residents.

Having thus provided in the body of the section for "every seaman" on a vessel of the United States, Congress added a proviso declaring that the section shall apply "to seamen on foreign vessels while in the harbors of the United States." There being no limitation on the word "seamen" as used in the proviso, it must be taken to mean the same class of persons as are designated as "every seaman" in the body of the section; for, if the word "seaman" as so used did not apply to all, it would not have the same

meaning as elsewhere. The effect of the proviso, therefore, is to extend the benefits of the section to "every seaman" on a foreign vessel in a port of the United States, regardless of nationality.

Moreover, the unqualified language of the proviso unmistakably indicates a purpose on the part of Congress that foreign seamen shall share in the benefits conferred, for the reason that the words "foreign vessel" carry with them the implication that such vessels are manned by foreigners, and it is inconceivable that Congress should have written these words into the law, without limitation, if it had intended to embrace only American seamen.

Coming now to the contention that the proviso relates only to contracts made in the United States, or to so much of their performance as occurs here, we make the same answer as to the first contention, namely, that had such been the purpose of the acts Congress would have qualified the language employed so as to restrain its plain meaning. Nowhere in the section, or in the act as a whole, is any such limitation to be found, and to read it in by construction would do violence to the language employed.

The design of the law is that it shall operate while foreign vessels are within our jurisdiction; while the foreign seamen, as "wards in admiralty," are within the care of our admiralty courts. The construction, contended for, would impair the meaning of several important provisions of the act. Under such construction no necessity would exist for opening our courts to seamen contracting in our ports with mas-

ter of vessels, so long as here. Nor would there be any need to provide for the abrogation of treaties.

Again, section 16, providing against arrest and imprisonment for desertion, expressly applies to foreign seamen. The section now under consideration was designed, among other things, to render said section effective. (*Infra*, pp. 17–19.) It is patent that a seaman, without funds to provide for his immediate necessities, would be under practical compulsion to remain with the ship. The effect of construing section 4 to apply only to American seamen, or to seamen shipping in American ports, would be, therefore, materially to restrict the beneficent provisions of section 16, designed to prevent the holding of seamen in involuntary servitude while in the jurisdiction of the United States.

The argument that the title of the act restricts its benefits to American seamen does not militate against the construction here insisted on even if it is applicable.

While the application of the act here contended for will benefit foreign seamen as well as American, this is essential in order to make effective such benefits for American seamen and to protect the American merchant marine. For if foreign ships manned by foreign crews could come into American ports free from liability to respond to the demands of the sailors for wages, shippers and ship brokers would give preference to foreign charters, and the masters would discriminate against American seamen. Thus it would come about that instead of benefiting American sea-

men and American shipping, the act would be but another hindrance.

Therefore, to make the act effective for the benefit of American seamen and the protection of American ships, it is provided that masters of foreign vessels, while completely at rest in our ports, and enjoying our hospitality and the protection of our laws, shall be under like liability with the masters of American vessels to respond to the demands of their crews for one-half of their accrued wages.

There is nothing in the cases of *Sandberg* v. *McDonald*, 248 U. S. 185, or *Neilson* v. *Rhine Shipping Co.* and *Hardy* v. *Shepard & Morse Lumber Co.*, 248 U. S. 205, which militates against this conclusion. Indeed, the contention of the claimant in each case proceeded on the assumption that Section 4 applied, and dealt *alone* with what credits they were entitled to set up in responding to the seamen's demands, under Section 11.

The opinion in the first case recites (pp. 191–192):

> On February 22 (1917) libelants demanded of the master of the ship payment of one-half of the wages earned by them to that date. The master then paid them a sum which, with the cash paid them, and the price of articles purchased as stated above, together with the advances made in Liverpool, equaled or exceeded the one-half of the wages then earned by each of them from the commencement of his service for the ship. It was less, however, than such one-half wages if the advances at Liverpool had not been included in the credits.

And states the question to be decided as follows (p. 192):

> Under the foregoing statement of the facts * * * was the master entitled to make deduction from the seamen's pay of the advancements made at Liverpool?

In the other cases mentioned, American vessels shipped sailors at Buenos Aires and by libelants' directions advanced one month's pay. This was the custom of the port and was there lawful; without so doing the vessels could not have obtained full crews. At the end of the voyage the seamen were paid, deduction being made of the advances, and they thereafter sued for the amount so deducted.

The only question decided in those cases is that advances made outside of the United States, under contracts valid where made, and where the advances are made, are not within the prohibition of the statute of the United States against such advances; and that the reference to foreign vessels therein applies only to their acts while in the United States and does not relate to completed transactions had elsewhere, where they are legal.

But the section now before the court relates to the rights of seamen on foreign vessels while in the jurisdiction of the United States. It creates a right to be exercised in its territory and to be enforced in its courts. It declares that no contract, wherever made, which contravenes it, shall have any force within the United States.

(B) *Purpose of the act.*

The rights of seamen on American vessels to demand payment of wages at frequent intervals was deemed essential to their welfare; but to so provide while leaving foreign vessels free to seek our ports with and for cargoes with crews having no such rights would have made such foreign ships the carriers sought for by charterers and would have placed American bottoms at great disadvantage. The welfare of the crews on American ships could only be thus provided for, if *all ships* in our ports were subjected to like regulations.

Section 16 of the Seamen's Act abolished the remedy of arrest and imprisonment for desertion of foreign seamen, and regardless of the contract made abroad, the treaties requiring its specific performance were abrogated.

But such a plan would prove entirely abortive if the foreign seaman in our ports were unable to obtain sufficient money to carry him until he secured his next job and were compelled by his immediate necessities for food and lodging to remain with the foreign ship. The purpose of the proviso to section 4 is to provide that sum of money, and make said section apply in all cases, and also to prevent its abrogation by contract, no matter where made.

Section 4 is an amendment to section 4530 of the Revised Statutes, as amended by section 5 of the act of December 21, 1898, 30 Stat. 756 (see Comp. Stat. (1916), sec. 8322). Said act of December 21, 1898, provided for payment to the seaman of half

the wages due him at every port where the vessel unloads or delivers cargo "unless the contrary be expressly stipulated in the contract." In the present act the quoted clause was stricken out and a proviso added as follows:

> *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.

The language is not susceptible of a contrary interpretation. It would have, practically, no room for operation if limited to the case of contracts by foreign seamen executed in the United States. Foreign seamen on foreign vessels are usually shipped abroad, and the cases would be few indeed of contracts made in ports of the United States for a return voyage to our shores. The same reasons forbid an interpretation which would limit the operation of the section to American seamen.

III.

The deliberate intent to cover contracts of foreign seamen made abroad is shown by the committee reports and the legislative history of the act.

The proceedings in Congress show that the proviso covering seamen on foreign vessels was added for the very purpose of aiding the American merchant marine—a purpose which fails of accomplishment if all foreign seamen, or all seamen on foreign ships who have made contracts at low wages, and enter

American ports, are not entitled in our harbors to demand half of their wages to enable them to seek other employment. House Report No. 645 (62d Cong., 2d sess.), which accompanied H. R. 23673, reported favorably a bill in which section 3 was in the language of section 4 of the present Seamen's Act. The favorable majority report stated (pp. 7–8):

> Two things are essential to the building up of our merchant marine; one is the creating of a condition where the initial cost of the vessel is as low as that of the foreign vessel and the other is an equalization of the operating expenses.
>
> This bill will tend to equalize the operating expenses. Under existing laws men may be and are employed at the ports where the lowest standard of living and wages obtain. The wages in foreign ports are lower than they are in the ports of the United States; hence the operating expenses of a foreign vessel are lower than the operating expenses of an American vessel. It is not proposed to prevent vessels from employing seamen in ports where they can secure them cheapest, but it is proposed by this bill to give the seamen the right to leave the ship when in a safe harbor, and in time this will result in foreign seamen engaged on vessels coming into ports of the United States being paid the same wages as obtain here, as a means of retaining their crews for the return voyage. That will equalize the cost of operation, so that vessels of the United States will not be placed at a disadvantage.
>
> * * * * *

> Section 3 amends present law by striking out the following: "Unless the contrary be expressly stipulated in the contract" and inserting in its place as follows: "and all stipulations to the contrary shall be held as void." The section thus amended gives the seaman the right to demand one-half the wages due him in any port, notwithstanding any contract to the contrary, and extends its application to seamen on foreign vessels while in American harbors, and the whole section becomes part of the means by which the cost of operation of all vessels taking cargo out of any American port may be equalized.

That the statute was intended to affect foreign contracts is evidenced by the minority report which, *inter alia*, objected to the legislation on the ground that the statute affected the enforcement of contracts made abroad which were valid where made.

Definite language is used also in the favorable House report accompanying S. 136, which became the seamen's law (H. Rept. No. 852, 63d Cong., 2d sess.), and a quotation is made from the House report above cited.

The legislative history of the act is confirmatory. Section 3 of H. R. 23673, Sixty-second Congress, second session, was presented to the House by Mr. Wilson of Pennsylvania, on April 23, 1912 (48 Cong. Rec. 5242). Opposition developed on the ground that it was not in accordance with comity and was not good policy thus to affect foreign contracts of strangers who desire to trade with us (48 Cong. Rec. 9259).

An amendment was offered, striking out the proviso with reference to the foreign seamen (48 Cong. Rec. 9502, 9503.) The difference in the wages of American seamen from British seamen, amounting to 16 to 20 per cent, was, however, cited (48 Cong. Rec. 9435; see also Report Commissioner Navigation, 1906, pp. 64, 92), and it was said the section would have the effect of raising wages to the American level and equalizing labor cost of operation of foreign and American boats (48 Cong. Rec. 9259, 9429, 9431, 9432, 9434, 9435). So the amendment was rejected by the House (48 Cong. Rec. 9502, 9503).

In the third session of the Sixty-second Congress on February 26, 1913, Mr. Burton presented to the Senate from the Committee on Commerce a substitute for H. R. 23673 which struck out the proviso that the act should apply to seamen on foreign vessels while in the harbors of the United States, and provided instead as follows:

> This section shall apply to seamen on foreign vessels owned in major part by American citizens, corporations, or holding companies when such vessels are in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement (49 Cong. Rec., pt. 5, p. 4567).

In presenting the report Mr. Burton said:

> * * * we do not believe that we have any right to interfere with the management of foreign ships on articles signed abroad.

The Senate committee substitute was passed by both Houses, but the President did not sign the bill, so it failed to become law (49 Cong. Rec. 4588, 4806, 4854).

In the next Congress, the Sixty-third, however, sentiment changed. The act was reported in the broad terms as finally passed. The prevailing sentiment was expressed by Mr. Fletcher, who was acting chairman of the Senate committee in charge of the bill, as follows (50 Cong. Rec. 5749):

> First, Senate bill 136 permits seamen on foreign vessels to leave their vessels in ports of the United States; that was one great thing to be worked out; second, it permits seamen to draw one-half of the pay due them in any port where the vessel lies or delivers cargo, making this section applicable to foreign vessels while they are within the jurisdiction of our laws; * * *
>
> The right to one-half the earned wages at a stopping place on a voyage would seem to be reasonable. It would not induce a sailor to leave a ship when he was being decently treated and fairly compensated to have the privilege of quitting and collecting only one-half of what he had earned. On the other hand, if the sailor is maltreated or for sufficient reason he quits the vessel, perhaps in a strange land, he should at least have half the wages he has earned in cash. The forfeiture of the other half would seem to be ample allowance by way of liquidated damages for breach of his contract.

See also 52 Cong. Rec. 4646, as follows:

> Mr. HARDY. We are struggling to build up an American merchant marine. If you do not have rules that restrict competitors of the American merchant marine to the full extent and just as you restrict the American merchant marine, you never can have an American merchant marine. The real milk in the coconut seems to be this. * * * A seaman comes from Naples here on a low wage. When he gets into the port of New York, he is dissatisfied. He has been out a month, the ship is safe in port, and some wages are due him. The shipmaster, fearing that perhaps he will not return, will not give him a dollar. He can not go out in New York and pay for a night's lodging or for a meal. Had you not just as well have the law say, "We will arrest him and put him back," as to have the law say that when he gets to New York he can not get a dollar or a dime of the wages due him simply because he has contracted that way across the water? We provide here that when these men come to our ports they shall be entitled to demand half the wages earned, and if refused to go to our courts and sue for one-half of the wages due them. Mark you, we do not encourage the seamen to desert, and we make him lose all he leaves—one-half his wages and his clothing and property on board the ship—but we give him a little mite, so that he may buy a night's lodging or pay for a breakfast.
>
> * * * We want to build up an American merchant marine. We want to put the American shipowner on the seas governed by the

same rules, subject to the same restrictions that the foreign shipowner is under; no more, no less, and this bill in addition to striking the shackles from the limbs of the seaman places our shipowner on the ocean on equal terms with the shipowner of any other nation with one exception, and that is that he may have to pay more for his vessel, but if it is one in the foreign trade only he gets his vessel on equal terms. Then when you put two vessels under different flags, plowing the same waters, and the seaman is free, the seamen of those two vessels will receive the same wages because the seamen will go to where they can get higher wages. But if you shackle them, if you say we will arrest you if you desert, or we will hold you to your ship by the pangs of your stomach, or we will not let you sleep, we will not let you eat, we will not give you anything you have earned if you leave the ship, if we do that then the shipowner abroad can hold in chains his seamen as long as he pleases.

SECOND PART—VALIDITY OF THE ACT.

IV.

By section 4 of the Seamen's Act Congress imposed a valid condition upon the entry of foreign vessels into ports of the United States.

A foreign merchant vessel has no vested right to enter our ports. The act of entry signifies acceptance of the conditions imposed.

The power to impose such conditions is an incident to the sovereignty of the Nation. Vattel, Law of Nations (Chitty, ed., 1863), p. 40.

That Congress is empowered to prevent all foreign vessels from entering the ports of the country, as in an embargo, and to admit them only upon conditions within its uncontrolled discretion, is well settled. *Patterson* v. *Bark Eudora*, 190 U. S. 169; *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320.

This power has been exercised by Congress in its absolute discretion from the beginning with reference to the exclusion of merchandise from foreign countries. *Buttfield* v. *Stranahan*, 192 U. S. 470, 492–493; *Weber* v. *Freed*, 239 U. S. 325, 329. Familiar exercise of the power with reference to aliens brought this comment from the court in *Turner* v. *Williams*, 194 U. S. 279, 289:

> Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in.

It seems clear that Congress imposed the wage requirement of section 4 as a condition to the entry of foreign vessels. It knew of the provisions of foreign laws and of the treaties under which matters of wages on foreign vessels were permitted to be settled in this country according to the laws of the treaty nations. It knew also of its power to subject the entry of foreign ships to conditions, from the frequent citation within the legislative halls of *Wildenhus's Case*, 120 U. S. 1, 11, where it is said:

> It is a part of the law of civilized nations that when a merchant vessel of one country

> enters the ports of another for purposes of trade, it subjects itself to the law of the place to which it goes.

It is, of course, unnecessary that Congress label its enactment with the words "This is a condition." It is plain enough from the terms used. This is set at rest by the cases of *Oceanic Steam Nav. Co.*, *supra*, and the *Bark Eudora*, *supra*.

In *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320, the statute was section 9 of the act of March 3, 1903, c. 1012, 32 Stat. 1213, as follows:

> That it shall be unlawful for * * * the owner, master, agent, or consignee of any vessel, to bring to the United States any alien afflicted with a loathsome or with a dangerous contagious disease; and if it shall appear to the satisfaction of the Secretary of the Treasury (Secretary of Commerce and Labor) that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars * * *.

The steamship company sought to recover the fine imposed by the Secretary of Commerce and Labor, which it had paid under protest. The court recognized as apparent that the power to impose the fine

was lodged with the Secretary only for acts performed abroad, namely, the want of competent medical inspection at the point of foreign embarkation, together with the subsequent entry of the vessel within our territory. The court upheld the fine as lawfully imposed and said (p. 342):

> In view of the absolute power of Congress over the right to bring aliens into the United States we think it may not be doubted that the act would be beyond all question constitutional if it forbade the introduction of aliens afflicted with contagious diseases, and, as a condition to the right to bring in aliens, imposed upon every vessel bringing them in, as *a condition of the right to do so*, a penalty for every alien brought to the United States afflicted with the prohibited disease, wholly without reference to when and where the disease originated. It must then follow that the provision contained in the statute is of course valid. * * * [Italics ours.]

The Court made a similar holding in *Patterson* v. *Bark Eudora*, 190 U. S. 169. The statute there involved was section 10 (a) of the act of December 21, 1898, 30 Stat. 755, 763, which provides that it shall be, and is hereby made, unlawful to pay any seaman wages until he has actually earned the same and adds "(f) That this section shall apply as well to foreign vessels as to vessels of the United States." The Court said (p. 178):

> The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the

> nations to which these vessels belong may be withdrawn. Indeed, the implied consent to permit them to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign as well as to domestic vessels. *Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports*, and those conditions the courts are not at liberty to dispense with. [Italics ours.]

Even if the rule that a statute would not be construed to impair the obligation of a contract could be invoked against the United States, it is without any application here. The statute was passed on March 4, 1915, and took effect as to American vessels 8 months, and as to foreign vessels 12 months, after its passage. The world was on notice that such was the law of the United States governing all contracts which were to be performed in whole or in part within the jurisdiction of the United States from and after that date. If after March 4, 1915, a contract was made in England for a voyage, which by special or general clauses provided for a voyage or sojourn within the United States, such contract was made subject to this law and the contracting parties knew that if they entered the United States in pursuance thereof after March 4, 1916, the provisions of this act

constituted a part of the legal relations, *inter partes*, while in the United States, as fully as any provision of the written contract and would overrule the writing if conflicting.

V.

The statute declares a rule of policy of the forum forbidding the enforcement of contracts providing for the payment of wages upon the completion of the voyage or at the discretion of the master.

Whatever may be the rule as to the law governing the validity of a contract—whether the law of the place where made, of the place of performance, or wherever—it is settled that a court may not recognize and enforce an obligation when to do so is contrary to the public policy of the forum.

A recent statement of this rule was made by Mr. Chief Justice White in *Bond* v. *Hume*, 243 U. S. 15. Suit was brought in Texas in connection with the sale on defendant's account of cotton for future delivery upon the New York Cotton Exchange. The contract was valid in New York. A statute of Texas, which made criminally punishable the dealing in futures except under certain conditions, was held not to cover the particular case. The Chief Justice, delivering the opinion of the Court, said (p. 21):

> * * * It is equally rudimentary that an independent State under that principle will not lend the aid of its courts to enforce a contract founded upon a foreign law where to do so would be repugnant to good morals, would lead to disturbance and disorganiza-

> tion of the local municipal law, or in other words violate the public policy of the State where the enforcement of the foreign contract is sought.

And in *The Kensington*, 183 U. S. 263, a contract made in Belgium, valid by the law of Belgium, limiting the right of recovery for loss of baggage to an arbitrary amount, was held unenforceable in the courts of this country, and damage awarded for the full value of the baggage injured. This court said (p. 269):

> As, however, the ticket was finally countersigned in Belgium, and one of the conditions printed on its face provides that "all questions arising hereunder are to be settled according to the Belgium law, with reference to which this contract is made," it is insisted that such law should be applied, as proof was offered showing that the law of Belgium authorized the conditions. The contention amounts to this: Where a contract is made in a foreign country, to be executed at least in part in the United States, the law of the foreign country, either by its own force or in virtue of the agreement of the contracting parties, must be enforced by the courts of the United States, even although to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it.

Whether or not a release to a common carrier from liability for negligence is valid is not a question of moral turpitude. *Fonseca* v. *Cunard Steamship Co.*,

153 Mass. 553. As was further said in *The Kensington*, 183 U. S. 263, p. 270:

> Nor is the suggestion that, because there is no statute expressly prohibiting such contracts, and because it is assumed no offense against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion.

The existence of the policy may be determined from decided cases and general principles. *Oscanyon* v. *Arms Co.*, 103 U. S. 261. It may, however, be declared by legislative act. As said by Mr. Chief Justice White in *Bond* v. *Hume*, *supra*, 243 U. S. 15, 22, 23:

> And finally it is certain that as it is peculiarly within the province of the law-making power to define the public policy of the State, where that power has been exerted in such a way as to manifest that a violation of public policy would result from the enforcement of a foreign contract validly entered into under a foreign law, comity will yield to the manifestation of the legislative will and enforcement will not be permitted.

Indeed, this court has always recognized the peculiar province of the legislature to declare the existence of a rule of public policy. In *Knott* v. *Botany Mills*, 179 U. S. 69, the public policy was settled by the Harter Act. In that case bills of lading signed at Buenos Aires exempted the carrier from liability

for negligence of the master of a British vessel. Libel was filed to recover for damage caused by negligence and the point was raised that the statute did not govern foreign vessels transporting merchandise from foreign ports under bills of lading signed abroad. The exemption clause of the contract was held unenforceable, and the court said (p. 74): "The power of Congress to include such cases in this enactment can not be denied in a court of the United States."

There is, moreover, recent precedent for allowing less than the full value of the services to be recovered. In *The Titanic*, 233 U. S. 718, it was held that Congress may limit the extent of recovery in a court of the United States for an obligation incurred under foreign law. "It is true," said Mr. Justice Holmes, delivering the opinion of the court, "that the foundation for a recovery upon a British tort is an obligation created by British law." He continued:

> (p. 732.) But it also is true that the laws of the forum may decline altogether to enforce that obligation on the ground that it is contrary to the domestic policy, or may decline to enforce it except within such limits as it may impose. *Cuba Railroad Co.* v. *Crosby*, 222 U. S. 473, 478, 480. Dicey, Conflict of Laws, 2d ed. 647. It is competent therefore for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out. *Butler* v. *Boston & Savannah Steamship Co.*, 130 U. S. 527.

There is, no difference in denying the enforcement of a foreign contract to a plaintiff and to a defendant when invoked as a reply to a statutory right. The validity for any purpose of contracts made in one country in the courts of another depends upon the laws of the latter, comity furnishing the rule in the absence of some statutory provision or conflicting public policy.

There is an analogy in the doctrine of the English law with reference to slavery, whereby if a master and slave enter the country, although slavery be recognized as legal in the country from which they came, the courts will refuse the master all aid to exercise control over his slave, and if the master seeks to exercise control in a manner justifiable only by that relation, will prevent such control. (See authorities cited in dissenting opinion of Mr. Justice Curtis in the *Dred Scott Case*, 19 How. 393, 590–591.)

CONCLUSION.

It is respectfully submitted that section 4 of the seamen's act should be interpreted to include foreign seamen serving under foreign contracts on foreign vessels in harbors of the United States, and that as so interpreted the section is valid.

December, 1919.

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United States Supreme Court,

OCTOBER TERM, 1919

No. 373

STRATHEARN STEAMSHIP COMPANY, Limited,

Petitioner,

—against—

JOHN DILLON,

Respondent.

BRIEF FOR BRITISH EMBASSY.

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INDEX.

AUTHORITIES CITED.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No. 373

STRATHEARN STEAMSHIP COMPANY, LTD.,
Petitioner,

versus

JOHN DILLON,
Respondent.

On Writ of *Certiorari* to the United States Circuit Court of Appeals for the Fifth Circuit.

Brief on Behalf of John Dillon, Respondent.

This is an action brought under the Seamen's Act of March 4th, 1915, and involves the construction and validity of Section 4 of that Act, amending Section 4530 of the Revised Statutes of the United States, which reads as follows:

> "Section 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the Master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the

voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: PROVIDED, such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. * * AND PROVIDED FURTHER, that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

The respondent, Dillon, was a British subject, and shipped at Liverpool, on a British vessel on May 8th, 1916. The shipping articles which he signed provided for a voyage of not exceeding three years duration, commencing at Liverpool and ending at such port in the United Kingdom as might be required by the master, and included ports of the United States. Wages were fixed by the articles, and made payable at the termination of the voyage. At the time of the demand hereinafter referred to, the period of the voyage had not been completed. The articles were signed on or about the 8th day of May, 1916, and contained the provision "no cash shall be advanced abroad, or liberty granted, other than at the pleasure of the master." It is conceded that the provisions of the contract with reference to the payment of wages, are valid by the laws of Great Britain.

On July 31st, 1916, the ship arrived at the port of Pensacola, Fla., and on August 2nd following, while the ship was

in this port, the respondent, still in the employ of the ship, demanded of the master one-half part of his wages which he had then earned. The payment was refused.

Prior to the time of this demand, nothing had been paid to Dillon for a period of about two months; and following the refusal of the master to comply with the demand for half wages, the respondent filed, in the District Court of the United States, his libel against the ship, claiming $125 the amount of wages earned at the time his demand and the refusal of payment, were made. The District Court found against the respondent on the ground that the demand was premature. The Circuit Court of Appeals reversed this decision holding that the demand was in time; that Section 4530 was applicable to the case and, thus construed, was a valid exercise of the powers of Congress.

The questions presented to this Court for determination are:

1. Does the provision relating to the payment of one-half part of a seamen's wages on demand contained in Section 4530 R. S., as amended by Section 4 of the Seamen's Act, apply to a foreign seaman on a foreign vessel while in a port of the United States, notwithstanding a stipulation to the contrary in the contract of employment, valid by the laws of the country where made?

2. If so, is Section 4530 in this respect a valid exercise of the power of Congress?

3. Was the demand for payment of half wages premature?

I.

The proviso in Section 4530 as amended making the provisions relating to half wages applicable to seamen on foreign vessels, is plain and unambiguous, and requires no construction. The word "seamen" is generic, and plainly includes those of every nationality. There being no ambiguity in the statute resort to the title or other extrinsic matters to affect the meaning of the word, is precluded.

Grammatically, the proviso is sufficiently comprehensive to include foreign, as well as American seamen. The word "seamen" is a word of general description and unless the context indicates a contrary intent on the part of Congress, may not be restricted by construction to a narrower meaning. The language of the proviso is that the section (4530) "shall apply to seamen on foreign vessels while in harbors of the United States." There is nothing in the context which suggests that this word "seamen" was used otherwise than in its generic sense as embracing seamen of every class and nationality. If the Act did not bear a title this conclusion, it would seem, would be conceded by the petitioner. The title of the Act is "An Act to promote the welfare of American seamen, etc.", and it is urged that this shows that Congress intended the word "seamen" in the proviso to apply to American seamen alone. This contention, however, is exactly opposed to the rule established by repeated decisions of this Court. To hold that the word "seamen" in the proviso includes all seamen, is not to extend its meaning by construction, but it is to refuse to *narrow*

its meaning by construction. It is not the respondent who seeks to extend by construction the meaning of the word, but the petitioner who seeks by construction to restrict its meaning, by appealing to the title, a thing extrinsic to the statute itself. In case of conflict between the words of the statute and the words of the title, it is the former, and not the latter, which controls. The ambiguity, if any exists, is not in the context of the statute but in the title which is not a substantive part of the law. Resort to extrinsic aid of this character in the construction of a statute is permissible only where it is fairly succeptible of different constructions. *Price v. Forrest*, 173 U. S. 410, 437.

In *United States v. Fisher*, 2 Cranch. 358, 566, this Court said:

> "Where the intent is plain nothing is left to construction. Where the mind labors to discover the design of the Legislature it seizes upon everything from which aid may be derived; and in such case the title claims a degree of notice and will have its due share of consideration."

In *United States v. O. & C. R. Co.*, 164 U. S. 526, 541, the Court said:

> "The title is no part of an act and cannot enlarge or confer powers or control the words of the Act unless they are doubtful or ambiguous. * * * The ambiguity must be in the context and not in the title to render the latter of any avail."

In *Cornell v. Coyne*, 192 U. S. 418, 530, the Court said:

> "The title of the act is referred to only in cases of doubt or ambiguity."
>
> "The title of an act, especially an Act of Congress,

> is generally of doubtful value as an aid to the construction of the act itself." *Hadden v. Barney*, 5 Wall 107, 110.

In *Hamilton v. Rathbone*, 175 U. S. 414, 421, there was involved the meaning of the word "property", and the Court holding that this word literally "includes every right and interest which a person has in lands and chattels and is broad enough to include everything which one person can own and transfer to another", and that this meaning can not be restricted by reference to prior acts, of which the Act in question constituted a revision, said:

> "* * * The province of construction lies wholly within the domain of ambiguity. * * * Prior acts may be resorted to to **solve** but not to **create** an ambiguity. If Section 728 were an original Act there would be no room for construction. It is only by calling in the aid of a prior act that it becomes possible to throw a doubt upon its proper interpretation."

There is no doubtful meaning in the words of the proviso under consideration. The doubt suggested by petitioner is not one arising naturally, but one artificially imported into the statute by appealing to the difference claimed to exist between the language of the title and the language of the act. The question is, therefore, strikingly analogous to the one presented in the case last cited, for the title of this act is invoked not to **solve** but to **create** an ambiguity, a proceeding expressly forbidden by the unbroken decisions of this Court.

But conceding, for the sake of argument, that it was the sole intent of Congress, by the law in question, to promote the welfare of American seamen only, it does not follow

that the provision giving foreign seamen in an American harbor the same right to demand and receive half wages, is not in furtherance of this purpose. The effect of limiting the provision to American seamen might well be to induce the employment of foreign seamen to the exclusion of American seamen by reason of the liability to pay half wages in the latter case, and in the absence of such liability in the former case and thus the effort of Congress to promote the welfare of the American seaman on foreign vessels by giving him half his wages on demand, be nullified by his exclusion from employment on such vessels altogether. Congress may well have reasoned that the welfare of the American seamen could be assured only by putting the foreign seamen upon the same level of equality in this respect. See the opinion of the Circuit Court of Appeals in the instant case, 256 Fed. 631.

But the force of the contention respecting the interpretative effect of the title completely vanishes when we consider not this single and over-emphasized clause alone, but the title as a whole. It is as follows:

> "An act to promote the welfare of American Seamen in the Merchant Marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

Not only, then, is it an act "to promote the welfare of American seamen" but it is an act "to abolish arrest and imprisonment as a penalty for desertion." Seamen by this Act are given the status of free workmen in other forms

of employment. They may quit their employment as other workmen may quit, without incurring the penalty of imprisonment for so doing. Upon entering a port of the United States the foreign seaman, unwilling to continue his service, is no longer held to a condition of involuntary servitude, but is free to go when and where he pleases. The value of this new freedom would be greatly reduced if the seaman were thereby set adrift in a strange harbor without a penny in his pocket. That this provision for the payment of half wages was inserted as an aid to the provisions of the law abolishing imprisonment for desertion, quite as much as for any other purpose, is made clear from a consideration of the statements of the congressional committee in reporting the bill.

In a report of the Committee on Merchant Marine & Fisheries to accompany S. 136 in the House of Representatives, June 10, 1914, (63 Congress, Second Session, No. 888, at page 10), it is said:

> "It is claimed that by making the provisions of Section 8 of the Senate Bill and Section 4 of the committee substitute apply to foreign ships it will tend to equalize the operating expenses of vessels. It is also claimed that the provisions of this bill abolishing arrest for desertion would be largely annulled if the foreign shipowner may by the terms of his contract deny the seaman the right to receive in our ports any part of the wages earned by him; that while the deserting seaman would not be subject to arrest, he would be compelled, if he deserted, to do so without a penny in hand to buy bread or procure a night's lodging; and it is claimed also if American vessels are subject to the provisions allow-

ing seamen to demand half their wages earned, while foreign vessels are not, the shipowner might and probably would put his ship under a foreign flag to avoid this obligation."

In the minority views in Part 2, of the same report, it is said:

> "These foreign shipowners will always have the right of making any kind of contracts outside of American jurisdiction which they may be permitted to make by the laws under which the contracts are made, but the United States must not be used to enforce such contracts or to protect shipowners in such exploitation because the inevitable result of such practice in American ports is to lower the standard of labor on vessels in such ports." Page 1.

> "The second proviso makes the section applicable to foreign vessels while in harbors of the United States, and is necessary in order that wages due the seamen shall not be withheld from him with the effect of compelling him to remain with the vessel against his will. It is a necessary part of the purpose to equalize the wage cost in foreign and American vessels trading from and to ports of the United States." Page 6.

It is not disputed that the proviso applies to foreign vessels, but it is insisted that the application should be restricted to American seamen on these vessels. It is obvious that on foreign vessels almost certainly, foreign seamen will greatly predominate, and Congress must be credited with a knowledge of this fact. Knowing this, it would be singular if Congress had used a word of such comprehensive application, a word naturally conveying to the ordinary

mind the understanding that every class of seamen was included, when it intended only to include one class. If Congress intended to provide for only the occasional American seaman, and to exclude from the provision the far more numerous class of foreign seaman, it is difficult to understand why this was not said in plain words.

Not only is there nothing in the context to indicate that Congress did not intend by the use of the word "seamen" to exclude foreign seamen, a thing which, as we have seen, must exist to justify the court in restricting the otherwise broad application of the term—but the context is quite to the contrary. The language of the proviso already discussed is followed by the words "and the courts of the United States shall be open to such seamen for its enforcement." Obviously, if the proviso was intended to apply only to American seamen there could be no purpose in this last quoted provision. The courts of the United States were already indubitably open in such cases.

The Falls of Keltic, 114 Fed. 357.

The Epsom, 227 Fed. 161.

In the latter case the Court said:

> "The right to invoke the jurisdiction of the federal courts by a citizen of the United States for the purpose of determining a dispute under shipping articles with a foreign vessel, is a constitutional right which the courts cannot deny. The people have ordained by the Constitution that judicial power shall be vested in the national courts, and that the judicial power shall extend to all cases of admiralty and maritime jurisdiction. These provisions without doubt are for the purpose of creating a tri-

> bunal where a citizen of the United States may, as a matter of right, seek redress of wrongs cognizable in admiralty and enforce legal rights. This may not be denied."

See also *The Neck*, 138 Fed. 147.

The only doubt, therefore, which there was the slightest necessity of removing, was in the case of the foreign seaman. The jurisdiction in that case, while it undoubtedly exists (*Belgenland*, 114 U. S. 364) is still to be exercised at the discretion of the Court, still more or less subject to the interfering power of the consul, and the qualifying force of treaty stipulation. *The Topsy*, 44 Fed. 631, 635. However effective to that end it may be, it seems very clear that the provision now under discussion was inserted with a view of removing all such restrictions upon, or doubts affecting the jurisdiction of the courts in cases brought by foreign seamen. It was in this view, and for this purpose, in part, that Section 10 of the Act provides for the abrogation of conflicting treaty provisions. *The Talus*, 248 U. S. 185. There was no reason for Congress to be solicitous respecting the right of American seamen to invoke the jurisdiction of the courts of the United States. Congress, in inserting the provision, could have had in mind only foreign seamen.

It is insisted, however, that the decisions of this Court in *The Talus*, *The Rhine*, and *The Windrush*, 248 U. S. 185, 205, are of controlling application, upon the question now under consideration, and that the lower court in deciding the instant case apparently ignored them. There is little support for this conclusion when we remember that the

same Court which decided the instant case also originally decided the *Talus*, and that the decisions of this Court and that Court, in that case, are in complete harmony. That the lower Court had its own decision clearly in mind must be taken for granted. That it likewise was not unmindful of the decisions of this Court is established by the fact that a short time prior to the disposition of the instant case these decisions were referred to and followed by that Court in *The Baltic*, 256 Fed. 95. It would seem, therefore, to be manifest that the lower court did consider the decisions referred to and its determination of the instant case embodies the conclusion of that Court that they were not applicable, a conclusion which was clearly warranted, as we shall presently undertake to show.

What is it that was decided by this Court in those cases? The law involved was Section 10a of the "Seamen's Act", which declares it to be unlawful to pay any seaman wages in advance of the time when he has actually earned the same, and which penalizes such payment with fine and imprisonment. Payment of advance wages, it is provided, shall not absolve the ship from full payment of wages after the same shall have been actually earned, and shall be no defense to an action for their recovery. This section is made applicable to foreign vessels "while in waters of the United States". The seamen whose rights were involved in those cases were foreigners on foreign ships, and had been paid advance wages not in the waters of the United States but in foreign ports. This Court, answering its own question, "How far was this intended to apply to foreign vessels?" says:

> "We find the answer, if we look to the language of the act itself. It reads that this section shall apply to foreign vessels while in the waters of the United States."

In the interpretation of this section the Court found no necessity for appealing to extrinsic aids. The words of the statute alone were considered and the Court found the intent of Congress plainly apparent in the language of the Act. The thing forbidden was the payment of advance wages and a penalty was prescribed for a violation. The Court held that this did not apply to payments made in the foreign port for Congress could not have meant to forbid the doing of an act in a foreign country, much less have meant to visit the doing of it with criminal penalties. The clear intention of Congress was that a general inhibition against the payment of wages should apply to vessels of the United States only, since otherwise there would have been no necessity of providing that it should have a limited application to foreign vessels, namely, while they were in waters of the United States. The doing of this specific act was, therefore, prohibited in all cases of vessels of the United States, and the effect of making the section applicable to foreign vessels while in waters of the United States, was to forbid the doing of this specific thing, namely, the advance payment of wages while, and only while, those foreign vessels were in the waters of the United States. The Statute did not undertake to deal with the matter while the foreign vessel was in a foreign port.

The foregoing, we think, constitutes a fair statement of the majority opinions, or is fairly deducible therefrom. But even the conclusion reached by the Court, it may be

said in passing, was fairly debatable, since four members of the court joined in a dissenting opinion.

The section now under consideration, presents a wholly different situation. This section confers a right upon every seaman on a vessel of the United States, to receive, on demand, one-half part of his wages then earned, notwithstanding any stipulation in the contract to the contrary.

This is made applicable to seamen on foreign vessels "while in the harbors of the United States." What, then, is the right conferred upon such seamen by this proviso? It is to receive from the master of a foreign ship half wages on demand, notwithstanding any stipulation in the contract to the contrary, **provided the ship be, at the time when the right is sought to be exercised, in a harbor of the United States.** Congress here has neither undertaken to penalize nor make unlawful any act committed, or to confer any right to be exercised within a foreign jurisdiction, and the decision of the lower court in favor of respondent does not involve any such result. The court below simply held that a foreign seaman on a foreign ship, while both were in the territory of the United States, was entitled to receive on demand, half his wages then earned notwithstanding any stipulation in the contract to the contrary. The operation of the law was strictly confined to the territory of the United States. There was no attempt to give our law effect within a foreign jurisdiction. There was simply a refusal to allow a foreign contract, valid under the law of the country where made, to nullify a statute of the United States sought to be enforced in a court of the United States. The decision does not give extra-territorial operation to our law.

Rather it refuses to give extra-territorial effect to a foreign law.

It is suggested by petitioner that the proviso may be construed so as to apply only to wages actually earned in a harbor of the United States. Such a construction would be altogether fanciful. The only possible inquiry is who are meant to be included by the proviso under the term "seamen"? When this is ascertained the provisions of the section by the unqualified language of the proviso, are made applicable to such persons. The right conferred by the section upon the seamen described therein, is to receive half wages **wherever earned.** To make this section applicable to other seamen is to give them the same, and not some other, or different, or inferior right. If **foreign** seamen are meant to be included their rights are to be measured by the provisions of the section precisely as the rights of the seamen first described are to be measured by them. To hold otherwise, is to say that **these** provisions are not applicable in the face of the plain declaration of the proviso that they are.

II.

The proviso, thus construed, is valid and constitutional.

The effect of the legislation is to give a foreign seaman upon a foreign vessel while in a harbor of the United States the right to receive on demand from the master of the vessel one-half part of his wages then earned, and to open the courts of the United States to such seamen for the enforcement of the right. Any stipulation in his contract to the contrary is declared to be void. The petitioner apparently

does not challenge the power of Congress to confer the right in the absence of contract provisions to the contrary, but it is denied that Congress has the power to render the legislation effective against such provisions contained in a foreign contract valid where made. If this view be sustained the result is that a foreign seaman will be authorized to go into a court of the United States to enforce a right given him by a federal statute, but the effect of the statute will be nullified by the production of a foreign contract containing countervailing provisions. It is contended, in the language of this Court (*The Appolon*, 9 Wheat. 362) that "the laws of no nation can justly extend beyond its own territories except so far as regards its own citizens"; and that is quite true. This, however, is far from saying that our laws may not affect—even vitally affect—engagements and contracts made in other countries by the citizens or subjects thereof whenever these engagements or contracts are presented in our courts for judicial action. The sentence following the language quoted shows what the Court had in mind in that case:

> "They (the laws) can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."

The law now being considered has no such effect. It does not operate within the jurisdiction of a foreign country but its operation is confined to our territory. It affects acts which have taken place in a foreign jurisdiction only by way of preventing these acts from rendering ineffective our own law within our own jurisdiction.

Again, it is insisted that the authorities cited by the lower Court go no further than to hold that the courts may refuse their aid to the affirmative enforcement of a foreign contract contrary to our law or policy, but constitute no warrant for holding that Congress may create a liability in contravention of a contract valid where made. The distinction sought to be drawn is one of words rather than of substance. Why have the courts refused to render judgment affirmatively enforcing such contracts? It is because "neither by comity nor by the will of the contracting parties can the public policy of a country be set at naught." *The Kensington*, 183 U. S. 263, 269.

Petitioner's contention confuses the application which was made of the principle in the cases referred to, with the principle itself. The principle extends further than the application, and is not affected by the position of the parties on the record. The courts simply refuse to give effect to a contract which contravenes the law or policy of the forum, and are not concerned with the incidental circumstance that their aid has been invoked by the defendant rather than by the plaintiff. The doctrine as stated by Chancellor Kent, is that:

> "* * * No people are bound or ought to enforce or hold valid in their courts of justice, any contract which is injurious to their public rights or offends their morals or contravenes their policy or violates a public law." 2 *Kent's Comm.* 458.

But, conceding the contention of petitioner literally, if a foreign seaman invoke the jurisdiction of a court of the United States to grant him the relief accorded by the stat-

ute, and the court hold that a foreign contract set up by the defendant constitutes a bar to such relief, what is this but an enforcement of the contract against the seaman?

The effect of the statute upon the foreign contract extends no further than the proviso itself declares. The provisions of the contract which conflict with the law are void only in the event, and upon the contingency, of a demand for half wages while the ship is in a harbor of the United States. As against a demand made elsewhere the contract remains enforceable even in a court of the United States in any action where the jurisdiction of such court may be properly invoked, for the provision is precise and definite that the section "shall apply to foreign seamen on foreign vessels **while in the harbors of the United States.**" The act does not affect such foregin contracts generally but only when they come into conflict with the right given to a foreign seaman in pursuance of the public policy of the United States as declared by its laws.

Even if Congress were prohibited, as the State Legislatures are prohibited, from passing laws impairing the obligation of contracts, this case would not fall within the rule, since, all other considerations aside, the contract in question was made subsequently to the effective date of the statute. The statute was passed March 4th, 1915, and became operative as to foreign ships twelve months later, while the contract is dated May 8th, 1916. For the same reason it becomes unnecessary to consider the contention of petitioner that upon the construction of the statute established by the lower court petitioner has been "deprived of property without due process of law", by taking away a

vested right under a contract. As a statute cannot impair the obligation of a contract which was not in existence when the statute was passed, so a statute cannot be said to take away a vested right under a contract which was not in existence when the statute was passed.

It is true that the liberty guaranteed by the Constitution includes the right to make contracts, but that right is a qualified, not an absolute, one. It is a right which is always subject to the effective exercise of the powers of Congress. It may be restrained whenever it will conflict with public policy. That the legislation now in question, insofar as it relates to the right of contract, is within the power of Congress, is abundantly established by the decisions of this Court. **Chicago** *B. & Q. R. Co. v. McGuire,* 219 U. S. 549, and cases cited. When the power of Congress to enact the substantive provision conferring the right to receive half wages is conceded or established, the power to invalidate all contracts which nullify or interfere with the right follows as a necessary corollary, and while the facts in this case do not make it necessary to go thus far, it may be said in passing that the power of Congress in this respect embraces not only future contracts but extends to contracts already in existence as well. *L. & N. Ry. Co. v. Mottley,* 219 U. S. 467, 482.

That the liberty of contract contemplated by the Constitution is not infringed by the statute in question is specifically established by the decision of this Court in the case of *The Eudora,* where the necessity and justification for such legislation is clearly and strongly set forth. *Patterson v. The Eudora,* 190 U. S. 169, 173. The provisions of the

statute may find warrant in the power of Congress to regulate commerce, or may find it in the authority of Congress to amend the maritime law of the country, an authority which is co-extensive with the law. *Ex parte Garnett*, 141 U. S. 1, 12; *Southern Pacific Co. v. Jensen*, 244 U. S. 205, and cases cited. The effect of the statute when applied to foreign vessels, is to impose its provisions upon such vessels as a condition precedent to their entry into our ports. That the imposition of such a condition is within the legitimate authority of Congress may not be doubted.

In *Patterson v. The Eudora*, *supra*, this Court said:

> "The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which these vessels belong may be withdrawn. Indeed, the implied consent to permit them to enter our harbor may be withdrawn, and if this implied consent may be wholly withdrawn, it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign, as well as domestic vessels * * * Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions the courts are not at liberty to dispense with. The interests of our own shipping require this. It is well said by counsel for the government in the brief which he was given leave to file:
>
> "'Moreover, as 90 per cent, of all commerce in our ports is conducted in foreign vessels, it must

be obvious that their exemption from these shipping laws will go far to embarrass domestic vessels in obtaining their quota of seamen. To the average sailor it is a consideration while in port to have his wages in part prepaid; and if, in a large port like New York, 90 per cent of the vessels are permitted to prepay such seamen as ship upon them, and the other 10 per cent being American vessels cannot thus prepay, it will be exceedingly difficult for American vessels to obtain crews. This practical consideration, presumably appealed to Congress and fully justified the provision herein contained.'

"We are of the opinion that it is within the power of Congress to protect all sailors shipping in our ports on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation, and that our courts are bound to enforce these provisions in respect to foreign, equally with domestic vessels."

In *Wildenhus' case*, 120 U. S .1, Chief Justice Waite said:

"It is a part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless, by treaty or otherwise, the two countries have come to some different understanding or agreement."

In *The Exchange v. McFadden*, 7 Cranch 116, Chief Justice Marshall said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitaton not imposed by itself.

Any restriction upon it deriving validity from an external source would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source. This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood not less obligatory.' And again, after holding it 'to be a principle of public law that national ships of war entering the port of a friendly power, open for their reception, are to be considered as exempted, by the consent of that power, from its jurisdiction,' he added:

"Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction, either by employing force or by subjecting such vessels to the ordinary tribunals."

A distinction is sought to be made by counsel because in *The Eudora case* the advance of wages to seamen was effected in the harbor of Portland, Maine, whereas the shipping articles in the case at bar were signed in Liverpool. The fundamental principle involved, however, is the same and while it may be true as a general rule that the *lex loci* governs and it is also true that the intention of the parties to a contract will be sought out and enforced, both of these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by the will of con-

tracting parties can the public policy of a country be set at naught.

Story, Confl. of Laws, Secs. 38, 244. *The Kensington*, 183 U. S. 263.

In *The Kensington*, where a contract had been entered into in Belgium and it was stipulated that "All questions arising hereunder are to be settled according to the Belgium law with reference to which this contract is made", it was insisted that the law of Belgium should be applied and it was shown that the law of Belgium authorized the conditions. This Court said:

> "The contention amounts to this: Where a contract is made in a foreign country to be executed at least in part in the United States, the law of the foreign country either by its own enforcement or in virtue of the agreement of the contracting parties, must be enforced by the courts of the United States even although to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it. It is true, as a general rule, that the *lex loci* governs, and it is also true that the intention of the parties to a contract will be sought out and enforced. But both these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by the will of contracting parties can the public policy of a country be set at naught."
>
> *Story, Confl. L.*, Secs. 38, 244.
>
> "While, as said in *Knott v. Botany Worsted Mills*, the previous decisions of this Court have not called for the application of the rule of public policy to

the precise question here arising, nevertheless, that it must be here enforced is substantially determined by the previous adjudications of this Court. In *Liverpool & G. W. Steam Co. v. Phoenix Ins. Co.*, 129 U. S. 397, 32 L. Ed. 788, 9 Sup. Ct. Rep. 469, the question arose whether conditions exempting a carrier from responsibility for loss caused by the neglect of himself or his servants could be enforced in the courts of the United States, the bill of lading having been issued in New York by a British ship for goods consigned to England. Despite the fact that conditions exempting from responsibility for loss arising from negligence were valid by the laws of New York, and would have been upheld in the courts of the State, it was decided that, in view of the rule of public policy applied by the Courts of the United States, effect would not be given to the conditions. In the very nature of things, the premise, upon which this decision must rest, is controlling here unless it be said that a contract made in a foreign country, to be executed in part in the United States, is more potential to overthrow the public policy, enforced in the courts of the United States, than would be a similar contract validly made, in one of the States of the Union. Nor is the suggestion that because there is no statute expressly prohibiting such contracts, and because it is assumed no offense against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend is the criterion. The precise question has been carefully considered and decided in the District Courts of the United States. In *The Guildhall*, 58 Fed. 796, it was held that a stipulation in a bill of

lading issued at Rotterdam on goods destined to New York, exempting the carrier from liability for negligence, would not be enforced in the courts of the United States, although such a condition was valid under the law of Holland. In *The Glenmavis*, 69 Fed. 472, the same rule was applied to a bill of lading issued in Germany by a British ship, for goods consigned to Philadelphia."

The public policy of the government is to be found in its statutes, and when the lawmaking power speaks upon a particular subject over which it has constitutional power to legislate, public policy in such a case is what the statute enacts.

United States v. Trans. Mo. Freight Association, 116 U. S. 290.

The statute as applied to foreign seamen on foreign vessels shipped in foreign ports under a contract valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, whenever these vessels enter our ports to load or deliver cargo and while in the harbors of the United States, is, therefore, clearly within the legislative powers of the United States and does not violate the constitutional provisions against the deprivation of property without due process of law.

III.

The right to demand half wages at every port where the vessel shall load or deliver cargo arises upon the arrival of the vessel in such a port, provided five days have elapsed to be computed from the last pay-

ment or from the commencement of the voyage and not from the arrival of the vessel in port.

The language of the statute with respect to the time when the five days of the proviso shall commence to run is, we think, free from all ambiguity; the intent to make the five days run from the commencement of the voyage and not from the arrival of the vessel in port, is, we think, so plain that there is nothing left for construction. In *The Talus*, both the District Court, 242 Fed. Rep. 954, and the Circuit Court of Appeals, 248 Fed. 670, so held.

The Court of Appeals said:

> "We think the plain purpose of Congress was to allow the seaman the benefit of half of his earned wages, less payments, upon each occasion upon which the statute permits him to demand them from the commencement of the voyage to the time of demand and that the words of the statute 'then earned' are not limited by the succeeding words 'at every port' but that the function of the latter is to describe the place of legal demand only. Absence of punctuation between the words 'then earned' and the words 'at every port' is of little persuasiveness as against the evident intent of Congress. The probable brief duration of a ship's stay in intermediate ports and the small amount of probable wages there earned by the seamen, would make the required payments of little value to them."

The District Court:

> "I do not think the vessel must be in port five days before the seaman can make his demand provided there has been five days or more of service by the sailor since he signed. I think the words 'provided

> such demand shall not be made before the expiration nor oftener than once in five days' means 'shall not be made before the expiration of five days of service during which wages were earned' and not 'oftener than once in each five days thereafter.' "

In *The Delagoa*, 244 Fed. 835, the District Court used this language:

> "This cannot be construed to mean that he, the seaman, is entitled to only one-half of the wages which he earned in that port nor that the five days period must have expired in port before making the demand. It apparently is intended to provide that no demand shall be made less than five days after the last preceding demand."

In this case the Circuit Court, 256 F. 633, said:

> "Evidently the intention was that such a demand should not have the effect given to it by the statute if it is made within five days after the voyage has commenced, or if made sooner than five days after the making of a previous demand contemplated by the statute. The appellant's demand was not premature."

But, if this proviso needs construction, it is elementary that it must be given that construction which will **carry into effect,** and not that construction which will **defeat** the intention, purpose and object of the legislator.

U. S. v. Gooding, 12 Wheat. 46.
Vanderbilt v. Erdman, 196 U. S. 480.

It is also elementary that every part of a statute must be construed with reference to every other part and every word and phrase in connection with its context and that

that construction must be sought which will give effect to its every word though ambiguous.

Bend v. Holt, 13 Peters 263.

Blair v. Chicago, 201 U. S. 400.

The manifest intention and purpose of the law was to include within its beneficial provisions "every" seaman on vessels which should load or deliver cargo at "every" port of the United States, and not to exclude from the operation of the statute a large majority of seamen, for, the language of the statute is "every seaman on board, etc.," and in "every port" where the vessel shall load or deliver cargo.

The construction which requires that the five days be computed from the arrival of the vessel in port and not from the commencement of the voyage, divides the seamen into two classes; viz., the more numerous class comprising seamen on vessels which remain in port less than five days, which it eliminates entirely from the benefit of the statute; the less numerous class comprising seamen on vessels which remain in port longer than five days, which it alone includes, but, as to which the provision of the law becomes in a great measure nugatory, because, while the purpose which Congress had in view in conferring upon the seamen the privilege of receiving their wages at "every" port was that they might use same while in port, that construction allows them half wages, when they are about to depart from the port. Hence, such a construction clearly defeats the object which Congress had in view, not only by eliminating the more numerous class entirely but by rendering

the provision of the law as to the less numerous class in a great measure nugatory.

The construction of the statute which computes the five days from the commencement of the voyage on the other hand, extends its benefits to "every" seaman in "every" port, the only restriction being that he should receive his wages not sooner than five days after the commencement of the voyage or after the last payment, which carries out fully the purpose of the statute.

In the case of the *"Italier"*, 257 Fed. Rep. 714, the Court argues thus: seamen on foreign vessels have no rights under this statute until they arrive in a harbor of the United States, therefore, the five-day period begins to run not from the commencement of the voyage, nor from the last payment, but from the arrival of the vessel in port. This reasoning is manifestly unsound and the error proceeds from the fact that the Court attempts to differentiate the limitation or qualification of the right to demand wages from the right itself.

The argument of the Court concedes by implication that, if the proviso as to the five-day period were eliminated from the statute, foreign seamen would have the right to demand half wages then earned on the arrival of the vessel in port. But, the Court fails to recognize that the proviso qualifies the right; that it places a limitation upon it and thus makes it an inferior or lesser right. If, therefore Congress had the power to confer this right, without the limitation of the five-day period, that is to say, if it had the power to confer the superior or greater right, *a fortiori*, Congress had the power to confer the lesser or inferior right, otherwise it

would not be absurd to say that the part is greater than the whole.

For the same reason if Congress has the power to impose upon the Master the obligation to pay half of the wages then earned at every port, Congress necessarily is vested with the power to impose a limitation upon this obligation and make it an inferior obligation.

CONCLUSION.

We respectfully submit, therefore, that the statute is applicable to the case at bar; that, as so applicable, it is a valid exercise of the power of Congress; that the demand for payment of half wages was not premature; and that, therefore, there should be judgment in favor of respondent affirming the judgment of the Circuit Court of Appeals.

Respectfully submitted,

GEORGE SUTHERLAND,

SILAS B. AXTELL,

W. J. WAGUESPACK,

Counsel for Respondent.

November 26th, 1919.

STATE OF ARKANSAS *v.* STATE OF MISSISSIPPI.

INTERLOCUTORY DECREE. IN EQUITY.

No. 7, Original. Entered March 22, 1920, upon motion submitted March 8, 1920.

Decree appointing, empowering and instructing commissioners to locate, etc., part of the boundary between the two States.

THIS CAUSE came on to be heard by this court on the motions and suggestions of counsel for the respective parties for the appointment of a commission to run, locate, and designate the boundary line between the States of Arkansas and Mississippi as indicated in the opinion of this court delivered on the 19th day of May, 1919, and

thereupon and on consideration thereof, It is ordered, adjudged and decreed as follows, viz:

1. The true boundary line between the States of Arkansas and Mississippi, at the places in controversy in this cause, aside from the question of the avulsion of 1848, hereinafter mentioned, is the middle of the main channel of navigation of the Mississippi River as it existed at the Treaty of Peace concluded between the United States and Great Britain in 1783, subject to such changes as have occurred since that time through natural and gradual processes.

2. By the avulsion which occurred about 1848, and which resulted in the formation of a new main channel of navigation, the boundary line between said States was unaffected, and remained in the middle of the former main channel of navigation as above defined.

3. The boundary line between the said States should now be located along that portion of said river, or the bed of said river, which ceased to be the main channel of navigation as the result of said avulsion, according to the middle of the main navigable channel as it existed immediately prior to the time of said avulsion.

4. A commission consisting of Samuel S. Gannett, Washington, D. C., Charles H. Miller, Little Rock, Arkansas, and Stevenson Archer, Jr., Greenville, Mississippi, competent persons, is here and now appointed by the court, to run, locate and designate the boundary line between said States along that portion of said river which ceased to be a part of the main navigable channel of said river as the result of said avulsion, in accordance with the above principles: Commencing at a point in said Mississippi River about one mile southwest from Friars Point, Coahoma County, Mississippi, where the main navigable channel of said river, prior to said avulsion, turned and flowed in a southerly direction, and thence following along the middle of the former main

STRATHEARN STEAMSHIP COMPANY, LIMITED, *v.* DILLON.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 373. Argued December 9, 1919.—Decided March 29, 1920.

Section 4 of the Seamen's Act of March 4, 1915, c. 153, 38 Stat. 1164, amending Rev. Stats., § 4530, provides that every seaman on a vessel of the United States shall be entitled to receive on demand from the master one-half of the wages which he shall then have earned, at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended; that all stipulations in the contract to the contrary shall be void; that such demand shall not be made before the expiration of or oftener than 5 days; that the master's failure to comply shall release the seaman from his contract and entitle him to full payment of wages earned, and (by a proviso) that the section shall apply to seamen on foreign vessels while in harbors of the United States, and that the courts of the United States shall be open to such seamen for its enforcement.

Held: (1) The proviso makes it clear that the benefits of the section are for foreign seamen on foreign vessels as well as American seamen on such vessels, since, otherwise, the grant of access to federal courts —a right already enjoyed by American seamen—would have been superfluous. P. 353. *Sandberg* v. *McDonald*, 248 U. S. 185, distinguished.

(2) The title of the act does not justify a different construction. P. 354.

(3) The section is constitutional as applied to the case of a foreign seaman who shipped abroad on a foreign vessel under a contract withholding payment of wages until the end of the voyage, and where demand was made before that time, it being within the authority of Congress thus to condition the right of foreign vessels to enter and use the ports of the United States. P. 355. *Patterson* v. *Bark Eudora*, 190 U. S. 169.

(4) The wages in respect of which demand may be made are not limited to those earned in a port of the United States, nor does the section intend that demand made in such a port shall be deferred five days from the arrival of the vessel there. P. 356.

256 Fed. Rep. 631, affirmed.

348. Argument for Petitioner.

THE case is stated in the opinion.

Mr. Ralph James M. Bullowa, for petitioner, submitted:

The statute was not intended to apply to a foreign seaman entering into a valid contract in a foreign port for service on a foreign vessel.

If the scope of the act is so broadened, it is necessary to impute to Congress an intention to enact legislation having force beyond the territory of the United States; to interfere with friendly foreigners by destroying the contracts which they have made between themselves at home merely because their ships visit our ports; and to interfere with and attempt to control the relations between the subjects of a foreign friendly power aboard their own ships while they are temporarily in American waters. The language of the proviso does not require such a construction. It may readily be so construed as to avoid such results by excluding from its operation foreign seamen under agreements made in foreign countries, thus making it conform to the purpose of the act as expressed in its title.

The libellant contends that the object was to make the seaman a "free man"—in simple words, to encourage desertion from foreign vessels, not to promote the welfare of American seamen. This is much too short-sighted to be accepted as American. Under British law the breach of a seaman's contract is desertion, and the punishment for desertion is imprisonment. Of what avail is it for a British seaman to desert and to ship on an American vessel with higher wages and, when he arrives in a British port, to be imprisoned? The argument further implies that it was the will of Congress to impose its standards not only on behalf of American seamen but of all seamen American or foreign. Fundamentally and radically the argument is at variance with the first principles of our Republic and is an attempt to violate the sovereignty of

each nation and the comity of nations. Moore, International Law Dig., vol. II, p. 335; *Wildenhus's Case*, 120 U. S. 1; *Sandberg* v. *McDonald*, 248 U. S. 185.

If construed as libellant contends, this statute violates the due process of law clause of the Constitution. It would give him wages to which he is not entitled under his contract; these same wages it would take from the ship; it would deprive the ship of libellant's services to which, under their contract, it is entitled; and it would take from the ship a right to defend an action brought by the seaman for wages which under his contract he has not yet earned. The argument that the effect of the statute is "merely remedial," in opening the courts of this country to foreign seamen, is contrary to the statements by which it has been explained, and to the statute itself. Properly, Congress has refused our fora to the enforcement of remedies which are contrary to its public policy (such as imprisonment for desertion), and has made it illegal to enter into a contract contrary to its law within its jurisdiction (*Patterson* v. *Bark Eudora*, 190 U. S. 169); but it is radically different to open our fora, not for the enforcement of its law, but for the avowed purpose of interfering with and rendering void the contracts, laws and regulations of a friendly power.

It cannot be held that the law of the place of performance is the law of the United States, for the place of performance was a British ship; and although she was not immune from process while in the ports of the United States, still she did not cease to be British. While amenable to the police power of the United States, and of its several States, "her discipline and all things done on board which affected only the vessel or those belonging to her" must be dealt with according to British law. The agreement to pay the seamen's wages was not to be performed in the United States—the wages were to be paid only upon the return of the vessel to a port in the United

Kingdom, except as the master might voluntarily make prior payments.

The temporary stay in a port of the United States cannot be held to take away the right of the owner to the security, which he held for the performance of the seaman's contract.

Even if the act applies to foreign seamen upon foreign vessels who ship at a foreign port, the libellant's demand for half wages was premature, five days not having elapsed from the time of the arrival of the vessel at an American port. *The Italier*, 257 Fed. Rep. 712.

Mr. George Sutherland and *Mr. W. J. Waguespack*, with whom *Mr. Silas B. Axtell* was on the brief, for respondent.

Mr. Frederic R. Coudert and *Mr. Howard Thayer Kingsbury* for the British Embassy, by special leave of court.

The Solicitor General, with whom *Mr. A. F. Myers*, was on the brief, for the United States, by special leave of court.

Mr. Justice Day delivered the opinion of the court.

This case presents questions arising under the Seamen's Act of March 4, 1915, c. 153, 38 Stat. 1164. It appears that Dillon, the respondent, was a British subject, and shipped at Liverpool on the eighth of May, 1916, on a British vessel. The shipping articles provided for a voyage of not exceeding three years, commencing at Liverpool and ending at such port in the United Kingdom as might be required by the master, the voyage including ports of the United States. The wages which were fixed by the articles were made payable at the end of the voyage. At

the time of the demand for one-half wages, and at the time of the beginning of the action, the period of the voyage had not been reached. The articles provided that no cash should be advanced abroad or liberty granted other than at the pleasure of the master. This, it is admitted, was a valid contract for the payment of wages under the laws of Great Britain. The ship arrived at the Port of Pensacola, Florida, on July 31, 1916, and while she was in that port, Dillon, still in the employ of the ship, demanded from her master one-half part of the wages theretofore earned, and payment was refused. Dillon had received nothing for about two months, and after the refusal of the master to comply with his demand for one-half wages, he filed in the District Court of the United States a libel against the ship, claiming $125.00, the amount of wages earned at the time of demand and refusal.

The District Court found against Dillon upon the ground that his demand was premature. The Circuit Court of Appeals reversed this decision, and held that Dillon was entitled to recover. 256 Fed. Rep. 631. A writ of certiorari brings before us for review the decree of the Circuit Court of Appeals.

In *Sandberg* v. *McDonald*, 248 U. S. 185, and *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205, we had occasion to deal with § 11 of the Seamen's Act, and held that it did not invalidate advancement of seamen's wages in foreign countries when legal where made. The instant case requires us to consider now § 4 of the same act. That section amends § 4530, Rev. Stats., and so far as pertinent provides: "Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary

shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. . . . *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

This section has to do with the recovery of wages by seamen, and by its terms gives to every seaman on a vessel of the United States the right to demand one-half the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the end of the voyage, and stipulations in the contract to the contrary are declared to be void. A failure of the master to comply with the demand releases the seaman from his contract and entitles him to recover full payment of the wages, and the section is made applicable to seamen on foreign vessels while in harbors of the United States, and the courts of the United States are open to such seamen for enforcement of the act.

This section is an amendment of § 4530 of the Revised Statutes. It was intended to supplant that section, as amended by the Act of December 21, 1898, c. 28, 30 Stat. 756, which provided, "Every seaman on a vessel of the United States shall be entitled to receive from the master of the vessel to which he belongs one-half part of the wages which shall be due him at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended unless the contrary be expressly stipulated in the contract," etc.

The section, of which the statute now under consideration is an amendment, expressly excepted from the right to recover one-half of the wages those cases in which the

contract otherwise provided. In the amended section all such contract provisions are expressly rendered void, and the right to recover is given the seamen notwithstanding contractual obligations to the contrary. The language applies to all seamen on vessels of the United States, and the second proviso of the section as it now reads makes it applicable to seamen on foreign vessels while in harbors of the United States. The proviso does not stop there, for it contains the express provision that the courts of the United States shall be open to seamen on foreign vessels for its enforcement. The latter provision is of the utmost importance in determining the proper construction of this section of the act. It manifests the purpose of Congress to give the benefit of the act to seamen on foreign vessels, and to open the doors of the federal courts to foreign seamen. No such provision was necessary as to American seamen, for they had the right independently of this statute to seek redress in the courts of the United States, and, if it were the intention of Congress to limit the provision of the act to American seamen, this feature would have been wholly superfluous.

It is said that it is the purpose to limit the benefit of the act to American seamen, notwithstanding this provision giving access to seamen on foreign vessels to the courts of the United States, because of the title of the act in which its purpose is expressed "to promote the welfare of American seamen in the merchant marine of the United States." But the title is more than this, and not only declares the purposes to promote the welfare of American seamen but further to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea. But the title of an act cannot limit the plain meaning of its text, although it may be looked to to aid in construction in cases of doubt. *Cornell* v. *Coyne*, 192 U. S. 418, 530, and cases cited. Apart from the text, which we think plain, it is by

no means clear that, if the act were given a construction to limit its application to American seamen only, the purposes of Congress would be subserved, for such limited construction would have a tendency to prevent the employment of American seamen, and to promote the engagement of those who were not entitled to sue for one-half wages under the provisions of the law. But, taking the provisions of the act as the same are written, we think it plain that it manifests the purpose of Congress to place American and foreign seamen on an equality of right in so far as the privileges of this section are concerned, with equal opportunity to resort to the courts of the United States for the enforcement of the act. Before the amendment, as we have already pointed out, the right to recover one-half the wages could not be enforced in face of a contractual obligation to the contrary. Congress, for reasons which it deemed sufficient, amended the act so as to permit the recovery upon the conditions named in the statute. In the case of *Sandberg* v. *McDonald*, 248 U. S. *supra*, we found no purpose manifested by Congress in § 11 to interfere with wages advanced in foreign ports under contracts legal where made. That section dealt with advancements, and contained no provision such as we find in § 4. Under § 4 all contracts are avoided which run counter to the purposes of the statute. Whether consideration for contractual rights under engagements legally made in foreign countries would suggest a different course is not our province to inquire. It is sufficient to say that Congress has otherwise declared by the positive terms of this enactment, and if it had authority to do so, the law is enforcible in the courts.

We come then to consider the contention that this construction renders the statute unconstitutional as being destructive of contract rights. But we think this contention must be decided adversely to the petitioner upon the authority of previous cases in this court. The matter was

fully considered in *Patterson* v. *Bark Eudora*, 190 U. S. 169, in which the previous decisions of this court were reviewed, and the conclusion reached that the jurisdiction of this Government over foreign merchant vessels in our ports was such as to give authority to Congress to make provisions of the character now under consideration; that it was for this Government to determine upon what terms and conditions vessels of other countries might be permitted to enter our harbors, and to impose conditions upon the shipment of sailors in our own ports, and make them applicable to foreign as well as domestic vessels. Upon the authority of that case, and others cited in the opinion therein, we have no doubt as to the authority of Congress to pass a statute of this sort, applicable to foreign vessels in our ports and controlling the employment and payment of seamen as a condition of the right of such foreign vessels to enter and use the ports of the United States.

But, it is insisted, that Dillon's action was premature as he made a demand upon the master within less than five days after the vessel arrived in an American port. This contention was sustained in the District Court, but it was ruled otherwise in the Court of Appeals. Turning to the language of the act, it enacts in substance that the demand shall not be made before the expiration of five days, nor oftener than once in five days. Subject to such limitation, such demand may be made in the port where the vessel stops to load or deliver cargo. It is true that the act is made to apply to seamen on foreign vessels while in United States ports, but this is far from requiring that the wages shall be earned in such ports, or that the vessels shall be in such ports five days before demand for one-half the wages earned is made. It is the wages of the voyage for which provision is made, with the limitation of the right to demand one-half of the amount earned not oftener than once in five days. The section permits no

demand until five days after the voyage has begun, and then provides that it may be made at every port where the vessel stops to load or deliver cargo, subject to the five-day limitation. If the vessel must be five days in port before demand can be made, it would defeat the purpose of the law as to vessels not remaining that long in port, and would run counter to the manifest purpose of Congress to prevent a seaman from being without means while in a port of the United States.

We agree with the Circuit Court of Appeals of the Fifth Circuit, whose judgment we are now reviewing, that the demand was not premature. It is true that the Circuit Court of Appeals for the Second Circuit held in the case of *The Italier*, 257 Fed. Rep. 712, that demand, made before the vessel had been in port for five days, was premature; this was upon the theory that the law was not in force until the vessel had arrived in a port of the United States. But, the limitation upon demand has no reference to the length of stay in the domestic port. The right to recover wages is controlled by the provisions of the statute and includes wages earned from the beginning of the voyage. It is the right to demand and recover such wages, with the limitation of the intervals of demand as laid down in the statute, which is given to the seaman while the ship is in a harbor of the United States.

We find no error in the decree of the Circuit Court of Appeals and the same is

Affirmed.